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2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

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EARLINE SKATES,

5 Plaintiff,

6 - against -

7 INCORPORATED VILLAGE OF FREEPORT,

8 Defendant.

9 -----X

10 DEPOSITION OF VICTORIA DINIELLI, taken by
11 Plaintiff, pursuant to Notice, at the offices of
12 Henry Law Group, P.C. 1597 Grand Avenue, Baldwin,
13 New York, on Wednesday, January 4, 2017, commencing
14 at 1:15 p.m., before Chandra D. Brown, a Registered
15 Professional Reporter and Notary Public within and
16 for the State of New York.

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2 A P P E A R A N C E S:

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4 HENRY LAW GROUP, P.C.
5 Attorneys for the Plaintiff
6 1597 Grand Avenue
Baldwin, NY 11510
By: CHAUNCEY D. HENRY, ESQ.

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9 BEE READY FISHBEIN HATTER
& DONOVAN, LLP
Attorneys for the Defendant
10 170 Old Country Road
Mineola, NY 11501
11 By: DEANNA D. PANICO, ESQ.

12 ALSO PRESENT:

13 Earline Skates

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IT IS HEREBY STIPULATED AND AGREED

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by and between the attorneys for the respective

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parties herein, that filing and sealing be and

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the same are hereby waived.

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IT IS FURTHER STIPULATED AND AGREED

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that all objections, except as to the form of

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the question, shall be reserved to the time of

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the trial.

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IT IS FURTHER STIPULATED AND AGREED

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that the within deposition may be sworn to and

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signed before any officer authorized to

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administer an oath, with the same force and

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effect as if signed and sworn to before the

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Court.

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1 Proceedings

2 MR. HENRY: The record reflects that we
3 are seated here in the middle of the
4 deposition. Counsel showed up 30 minutes
5 late -- instructed --

6 MS. PANICO: That's incorrect.

7 MR. HENRY: -- 40 minutes late. She
8 instructed her client, her witness to get up
9 from the deposition on the grounds that she
10 believes that the deposition cannot be
11 videotaped, which I've never heard of in --
12 I've never heard of this. I've done dozens of
13 depositions and they are all videotaped.

14 Counsel now has, in my opinion, frustrated
15 this process and has prevented us from moving
16 forward. We've been here on notice. She's had
17 this deposition notice. We provided her an
18 accommodation for her to get here and instead
19 she shows up 40 minutes late and instructs the
20 witness to leave the deposition. At this
21 point, we're going to seek judicial
22 intervention and we will begin the record again
23 based upon the outcome of that.

24 (Whereupon, a short recess was taken.)

25 THE COURT: On the record.

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2 So I understand from what I heard that
3 there is an issue as to whether or not there is
4 going to be a videographer at this deposition.

5 Is that right?

6 MR. HENRY: Well, in part, Your Honor.
7 There's two parts.

8 THE COURT: Did you notice the deposition
9 as being taken by a videographer?

10 MR. HENRY: There is no videographer here,
11 Your Honor. That's what I wanted to explain to
12 the Court initially.

13 The issue here, Judge, this video -- and
14 I'm looking for the precedent now, which I have
15 but my server is acting up -- this is a video
16 that's produced by our office for my purposes.
17 This is a work product. And the precedence in
18 this area, based off of what I've done, and
19 I've dozens of depositions this way, I'm able
20 to keep this for my own usage, which doesn't
21 require any notice because it's not a part --
22 I'm not using it in terms of this litigation.
23 In the event that I do, however, I would,
24 obviously, have to go through the motions and
25 produce that. But this is entirely for my own

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2 purposes. It's no different than me placing a
3 tape recorder here and recording it.

4 As an attorney, I need to be able to
5 understand and evaluate and analyze this
6 witness' responses to my question. This
7 deposition is being recorded by stenographic
8 means but I need it. This is what I need.
9 This is a tool of my trade that I've used in
10 trials that I've done in the Eastern District,
11 and also that I've used in other depositions
12 that I've had.

13 We don't have a videographer here that's
14 videotaping this, that's going to produce this
15 as a certified representation of this. This is
16 me -- our office activating a video for my
17 usage so that I can prepare and get ready for
18 trial in this case, Your Honor.

19 Again, I'm bringing up the case that I
20 have. I'm just having some issues. But this
21 is a case that I've looked into before. That's
22 how I even learned that I was able to do it,
23 because of the case. So that's our position.

24 And to have counsel get up before we even
25 make a record of our respective positions and

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2 instruct the witness not to even be sworn in,
3 and then to storm out of my office and then
4 tell the witness that she doesn't have to be
5 here, right, to then also having us wait while
6 we call the Court, you know, that to me is no
7 justification whatsoever for this. If there's
8 a dispute, she has a legitimate concern that
9 the video was there, then we raise it like
10 professionals and we make or record and we call
11 the Court as I did. To me, I've never seen
12 that before. I've never seen that.

13 MS. PANICO: Good afternoon, Your Honor.

14 If I may just address what Mr. Henry said.
15 The reason that I needed to leave the office
16 was because I needed to make a phone call to my
17 office to find out whether or not the Notice of
18 Deposition that Mr. Henry sent to my office,
19 whether or not it indicated whether or not the
20 deposition was going to be recorded by
21 stenographic means or audio visual.

22 Mr. Henry made the misrepresentation to me
23 while we were sitting here that his notice
24 indicated that --

25 MR. HENRY: I did not say that. That's

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2 why we have the video recording. I'll play it
3 back. I did not tell you that.

4 MS. PANICO: Mr. Henry had indicated that
5 the Notice of Deposition indicated that it was
6 supposed to be recorded by stenographic and
7 audio visual means. I asked him to produce a
8 copy of the Notice of Deposition to me, which
9 he refused to do.

10 MR. HENRY: That's not true. I did not
11 give -- if you're going to tell the truth, tell
12 the truth. I did not give you a copy.

13 MS. PANICO: I didn't interrupt you,
14 Mr. Henry.

15 THE COURT: Counsel, stop.

16 One question. The Notice of Deposition,
17 did it mention videographer at all?

18 MR. HENRY: No, Your Honor, it did not.

19 THE COURT: Okay.

20 In that case, the ruling is this: The
21 deposition will go forward by stenographic
22 means. There will be no videotaping of the
23 deposition.

24 Get on with it.

25 MR. HENRY: Your Honor, may I respond?

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2 THE COURT: You've already responded.

3 Thank you.

4 MR. HENRY: Well, I mean, at this point,
5 I'm going to have to make an application,
6 Judge.

7 THE COURT: Do what you want to do.

8 MR. HENRY: I'm asking you. I mean, in
9 light of the Court's ruling, I'm going to have
10 to make an application pursuant to Rule 60.
11 And also with respect to the motion for the
12 deposition. I mean, we'll -- there's no way
13 for me to move forward without the judge ruling
14 on that application because, again, I have the
15 case law that I'm looking up now that would
16 provide the Court with clarity as to the
17 purpose of this. And for the Court to issue a
18 decision without that, I think is tough.

19 THE COURT: You're saying you have a case
20 law, but you don't have it. I don't know what
21 you're talking about.

22 Here's what I'll do. Why don't we take 15
23 minutes and see if you could find a case for me
24 and I'll hear back from you in 15 minutes.

25 MR. HENRY: Thank you, Judge.

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2 MS. PANICO: Your Honor, if I may, I
3 didn't have the opportunity to brief this
4 matter and to look up cases prior to today
5 because Mr. Henry didn't provide me with prior
6 notice.

7 THE COURT: I understand that.

8 MS. PANICO: I'm also at Mr. Henry's
9 office. So I --

10 THE COURT: I get it. I understand all of
11 that, but I'll hear from you in 15 minutes.

12 MR. HENRY: Thank you, Judge.

13 (Whereupon, a short recess was taken.)

14 MR. HENRY: On the record.

15 Let the record reflect that we just had a
16 substantive discussion with the Court. I
17 agreed that I would not be recording this
18 deposition. I agreed that our office will not
19 record this deposition at this point in time.

20 Furthermore, during the discussion that we
21 had with the Court, I made it clear that the
22 parties agreed to stipulate to the continuation
23 of depositions that were noticed months ago
24 outside of the discovery period, and if there's
25 any issue with respect to any -- the recording

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2 of those depositions at a later date, then we
3 can cross that bridge and raise our objections
4 when we get there.

5 As of today, the Court gave me my options,
6 either to proceed without recording or set a
7 briefing schedule. I am proceeding without
8 recording.

9 Counsel wants me to turn off our
10 conference room computers. I am not doing
11 that. I'm making a representation to her that
12 the recording -- that it's not recording. I
13 mean, I don't know what else she wants me to
14 say. When she stormed up and went out of
15 conference room, there's a button here that was
16 pressed to stop it because she left. Now when
17 she came back, it was not reactivated.

18 Counsel may refer to certain conversations
19 that we had in the beginning, yes, those
20 conversations were picked up because we were
21 getting ready to swear this witness in before
22 the attorney asked the witness to leave and
23 before she herself left.

24 So we don't see any issues here. The
25 recording is off. We're not recording it and

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2 we'll move forward.

3 And the time now is 2:45.

4 MS. PANICO: If I may, the audio recording
5 device is still on.

6 MR. HENRY: It's not on. This is a
7 conference room camera. This is a conference
8 room.

9 MS. PANICO: Mr. Henry, I didn't interrupt
10 you.

11 MR. HENRY: It's a power -- I'm telling
12 you what it is. This is my office and this
13 light is the power light on this particular
14 device that's connected to this.

15 MS. PANICO: It may be your office but I
16 have a right to make a record.

17 MR. HENRY: Make a record but we got to
18 go. It's not recording. I made that
19 representation to you.

20 MS. PANICO: You continue to interrupt me
21 while I'm trying to make my own record --

22 MR. HENRY: Go ahead.

23 MS. PANICO: -- which is that the audio
24 recording device which Mr. Henry has agreed not
25 to use is still on. There's a blue light on

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2 and it's directly pointing at the witness.

3 I've asked Mr. Henry to turn it off.

4 MR. HENRY: It is off.

5 MS. PANICO: He has refused to do so.

6 MR. HENRY: The recording is off. I'm
7 making a representation to you it is off. You
8 want me to it shut down my computer. I'm not.

9 MS. PANICO: I want you to answer whether
10 or not there's a power button on the --

11 MR. HENRY: It is not being recorded. My
12 representation to you is that it is not being
13 recorded. You cannot direct me how my IT works
14 and what to shut down. It's not recording.

15 MS. PANICO: If it has a power button --

16 MR. HENRY: There is no power button.

17 MS. PANICO: I've asked you several times
18 and you haven't told me that.

19 MR. HENRY: Can we please bring the
20 witness in.

21 There is no power button on it. What are
22 you doing? There's no power button on it. Why
23 would I tell you -- there's no power button on
24 it.

25 MS. PANICO: There's no way this could

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2 just be unplugged?

3 MR. HENRY: No. It's not recording.

4 MS. PANICO: So why don't we point it at
5 you then?

6 MR. HENRY: No. We leave it alone. It's
7 not recording.

8 MS. PANICO: Then don't point it at my
9 witness.

10 MR. HENRY: Anyway, can you please bring
11 the witness in. It's not recording.

12 MS. PANICO: If you don't agree --

13 MR. HENRY: I'm going to call the Court.
14 Are you not bringing her in?

15 I represented to you now six times on the
16 record --

17 MS. PANICO: It's clearly on.

18 MR. HENRY: But it's not recording.

19 MS. PANICO: Why don't you just point it
20 at yourself then.

21 MR. HENRY: It's not recording.

22 MS. PANICO: You want to call the Court,
23 then call the Court again.

24 MR. HENRY: I'm not. It's not recording.

25 MS. PANICO: I don't care. Call the Court

1 V. Dinielli - 1/4/17

2 again. It's clearly still on. You're not
3 agreeing to turn it the other way.

4 MR. HENRY: Okay. Whatever you say.

5 (Whereupon, a short recess was taken.)

6 V I C T O R I A D I N I E L L I, called as a
7 witness, having been first duly sworn by a
8 Notary Public of the State of New York, was
9 examined and testified as follows:

10 EXAMINATION BY

11 MR. HENRY:

12 Q Ms. Dinielli, please state your full name.

13 A Victoria Dinielli.

14 Q And your current address, please.

15 A 50 Dartmouth Street, Rockville Centre.

16 Q And what is your educational background?

17 A Four years college.

18 Q All right.

19 Can you provide me a little bit of details
20 about that, please?

21 A I just have four years. I don't have a
22 diploma.

23 Q Four years. Do you have an actual degree
24 from that college?

25 A No, I don't.

1 V. Dinielli - 1/4/17

2 Q And what college did you attend? What
3 were the years?

4 A St. John's University, '77 to '81.

5 Q Okay.

6 And what was the degree program that you
7 were pursuing?

8 MS. PANICO: Objection to form.

9 Q You may answer.

10 MS. PANICO: You can answer, if you
11 understand.

12 A Could you repeat the question, please?

13 MR. HENRY: May I have a readback, please.

14 (Whereupon, the requested record was read
15 back by the Court Reporter.)

16 A I believe it was a bachelor's of science.

17 Q Okay.

18 And what year was that, what year of
19 attendance?

20 A '77 to '81.

21 Q Okay.

22 And I know I jumped right into it, but I
23 wanted to just lay a little bit of ground
24 rules.

25 Have you ever been in a deposition before?

1 V. Dinielli - 1/4/17

2 A I don't believe so.

3 Q Have you ever been in a room where you
4 were asked questions where there was a Court
5 Reporter?

6 A I have been in a deposition before, yes.

7 MS. PANICO: Just let him finish the
8 question before you answer.

9 THE WITNESS: I'm sorry.

10 BY MR. HENRY:

11 Q So your testimony is that you were in a
12 deposition before?

13 A Yes, I believe so.

14 Q You testified a few moments ago that you
15 didn't believe that you were in a deposition
16 before.

17 A I was -- you know, it's a lot of years.

18 Q Do you usually give inaccurate testimony
19 under oath?

20 MS. PANICO: Objection to form.

21 Q You can answer my question.

22 A Yes.

23 Q You usually give inaccurate information?

24 A I thought you said "an accurate."

25 No.

1 V. Dinielli - 1/4/17

2 Q Is there a particular reason why you said
3 you hadn't been at a deposition before although
4 you had?

5 MS. PANICO: Objection to form.

6 MR. HENRY: Counsel, speaking
7 objections -- your objections are noted, but
8 speaking objections, there's no need for it.

9 Q During the course of this deposition, you
10 may hear your attorney say -- note objections.
11 At no point in time should you not answer my
12 question unless your attorney instructs you
13 specifically not to answer my question.

14 Do you understand?

15 A Yes.

16 Q Okay.

17 So with respect to the question that I
18 asked you as to whether or not you've been in
19 depositions before, the first response you gave
20 was an inaccurate one; isn't that right?

21 MS. PANICO: Objection to form.

22 Q Isn't that right?

23 A The first a response was inaccurate.

24 Q So do you usually give inaccurate
25 responses after taking an oath?

1 V. Dinielli - 1/4/17

2 MS. PANICO: Objection to form.

3 A I corrected myself and after thinking
4 about it. I believe I was in a deposition
5 before.

6 Q Okay.

7 MS. PANICO: Let me just take a break with
8 my client.

9 MR. HENRY: I'm sorry. One moment. No.
10 There's open questions, number one.

11 MS. PANICO: There is no pending question.

12 MR. HENRY: There's no break. How could
13 you take a break with your client? We're in
14 the middle of a deposition.

15 MS. PANICO: Doesn't matter.

16 MR. HENRY: Let record reflect that
17 counsel now is standing up and instructing her
18 client to, I guess, leave the conference room
19 while I'm in the middle of my questioning. I'm
20 going to have no choice at this point but to
21 call the Court.

22 MS. PANICO: We're taking a break.

23 MR. HENRY: We're not taking a break.
24 We're on the record now. We just started.
25 We've only been on the record not even four

1 V. Dinielli - 1/4/17

2 minutes. I'm going to call the Court.

3 MS. PANICO: Fine. I'm trying to clarify
4 your record to make it clear for you.

5 MR. HENRY: You can't coach her.

6 MS. PANICO: Go ahead then. I'm not going
7 to bother the Court again.

8 MR. HENRY: Let the record reflect that
9 within the first four minutes of this
10 deposition counsel wanted to take a break, I
11 guess to go out and give her client some
12 instruction on how to answer my questions.

13 MS. PANICO: I object to Mr. Henry's
14 misrepresentation as to whether or not I was
15 going to coach my client or not coach my
16 client. I ask that he keep his opinions and
17 personal beliefs to himself rather than
18 disrupting and destroying the record with what
19 he believes and what he doesn't believe.

20 MR. HENRY: May we move forward now,
21 please.

22 BY MR. HENRY:

23 Q So with respect to this deposition, the
24 deposition that you were in before, can you
25 describe the nature of that deposition?

1 V. Dinielli - 1/4/17

2 A I don't recall. I don't recall.

3 Q How many times were you in a deposition?

4 A I'm not sure.

5 Q Well, when was the last time you were in a
6 deposition?

7 A I don't even know if it was a deposition.

8 I'm not --

9 Q Let the record reflect that you've now
10 within a matter of five minutes given three
11 different versions.

12 MS. PANICO: Objection to Mr. Henry's
13 misrepresentation.

14 Q You said that you weren't in one, then you
15 said that you were in one, and now you're
16 saying --

17 MS. PANICO: Objection to Mr. Henry's
18 misrepresentation of Ms. Dinielli's testimony.

19 A I'm not sure I was --

20 Q Did you testify earlier that you didn't --
21 you don't know if -- you were not in a
22 deposition before?

23 A I may or may not have been. I'm not quite
24 sure.

25 Q I see.

1 V. Dinielli - 1/4/17

2 Then you testified again that you were in
3 a deposition, right?

4 A I'm not sure if I was.

5 Q And then you testified just a few moments
6 ago that you are now not sure if you even were
7 in a deposition, right?

8 MS. PANICO: Objection to Mr. Henry's
9 representations of what my client testified to.

10 Q What's your current occupation?

11 A I'm the manager of the Freeport Recreation
12 Center.

13 Q How long have you been in that position?

14 A Seven years.

15 Q And what was your title before that?

16 A I was a manager of a private company.

17 Q So is the course of your employment with
18 Freeport limited to those seven years that you
19 served as a manager?

20 A Yes.

21 Q What was the private company that you were
22 with prior to --

23 A Sportime in Lynbrook.

24 Q Okay.

25 Is that the only position that you

1 V. Dinielli - 1/4/17

2 maintained while employed at Freeport?

3 A Yes.

4 Q And what are some of your responsibilities
5 in that position?

6 A I manage the facility. I manage the
7 people. I run the programs; rent the space;
8 make sure the facility is clean and maintained;
9 and I bring new programs and activate new -- I
10 activate new programs.

11 Q Has your responsibilities been the same
12 over the course of this -- of that time in
13 Freeport or have they changed?

14 A The same.

15 Q Are you under the influence of any
16 medication or any other substance at this point
17 that may affect your ability to tell the truth
18 here?

19 A No.

20 Q Do you have any problems recalling or
21 remembering events?

22 How would you say your memory is?

23 A Average.

24 Q What would you define as "average"?

25 A I could forget things. That's possible.

1 V. Dinielli - 1/4/17

2 Q How often do you forget things?

3 A Not very often.

4 Q So for the most part, you recall and
5 remember everything?

6 MS. PANICO: Objection to form.

7 Q That's right?

8 A I remember today. I remember yesterday.
9 I may or may not remember time past.

10 Q Do you know why you're here today?

11 A Yes, I do.

12 Q And why is that?

13 A Ms. Skates has a lawsuit with the Village.

14 Q What do you understand about that lawsuit
15 with the Village?

16 A I understand that Ms. Skates was -- she
17 was in my employment. She was terminated and
18 she is fighting that.

19 Q Why are you here?

20 A I was her manager.

21 Q How did you learn of today?

22 A I was contacted by our legal counsel.

23 Q And had there ever been any requests made
24 upon you to appear for a deposition any time?

25 A I don't understand the question.

1 V. Dinielli - 1/4/17

2 Q Were you ever advised, prior to today,
3 that you would be required to be here to be
4 deposed?

5 A Prior to today?

6 Q Yes.

7 A No.

8 Q When was the first time you learned that
9 you needed to be here to be deposed today?

10 A We had a schedule of about -- maybe about
11 a month ago and then it was -- the date was
12 changed to today.

13 Q And prior to that date change from a month
14 ago, were you ever provided with any dates with
15 any other earlier dates?

16 A Yes.

17 Q Okay.

18 Were there any reasons why you didn't
19 appear for those dates?

20 MS. PANICO: Can you specify the dates?

21 Q You may answer.

22 A I don't know what the reasons are.

23 Q Was there ever any reason that you
24 provided why you were unavailable for any of
25 the previous dates?

1 V. Dinielli - 1/4/17

2 A No. No.

3 Q So how did you learn that those previous
4 dates were cancelled?

5 MS. PANICO: Objection to form.

6 Q You may answer.

7 A I got a phone call last week asking if I
8 could come today. I said, yes.

9 Q Prior to today for the deposition that
10 were -- the dates that you were given, that you
11 testified that you had earlier, did you ever --

12 A No.

13 Q -- cancel?

14 MS. PANICO: Objection to form.

15 A No. No.

16 Q The decision to cancel or not appear for
17 those depositions, was that your decision?

18 A No.

19 MS. PANICO: Objection to form.

20 MR. HENRY: Your objection is noted,
21 Counsel.

22 Let the record reflect that, again, just
23 reminding you that frequent objections are
24 perceived and can be perceived as oppressive.
25 I would kindly ask that you limit your

1 V. Dinielli - 1/4/17

2 objections to those that are meaningful.

3 MS. PANICO: I'm going to continue to
4 object until you specify what dates you're
5 referring to because it's confusing to my
6 client.

7 MR. HENRY: The speaking objections --

8 MS. PANICO: I'm allowed to make a record,
9 Mr. Henry.

10 MR. HENRY: I'm going to call the Court.
11 I'm calling the Court. I'm not going to have
12 the speaking objections. This is not your
13 deposition.

14 (Whereupon, a short recess was taken.)

15 MR. HENRY: Back on the record.

16 We had a discussion with the Court. Each
17 side raised their respective concerns. From
18 what I drew from the Court or the clerk from
19 the Court's instruction was that Counsel does
20 have the right to make objections and that
21 those objections should be based on reasonable
22 grounds, from my interpretation of it.

23 With that said, we are going to be moving
24 forward with the deposition.

25 MS. PANICO: Just for the record, that is

1 V. Dinielli - 1/4/17

2 Mr. Henry's interpretation of the court
3 conference. I don't think it's necessary to
4 put my beliefs on the record.

5 Let's just move forward.

6 MR. HENRY: Okay.

7 BY MR. HENRY:

8 Q So with respect to -- with respect to the
9 reason why you're here today, were you provided
10 with any documents to review?

11 A No.

12 Q Did you review any documents before coming
13 here?

14 A I reviewed my own notes.

15 Q When you say your own notes, what do you
16 mean you reviewed your own notes?

17 A I had a file at the time.

18 Q Were those notes provided to your
19 attorney?

20 A Yes, they were back when.

21 Q Can you recall when?

22 A No.

23 Q When you say -- I'm sorry?

24 A No. Go ahead.

25 Q You can finish.

1 V. Dinielli - 1/4/17

2 A No. Go ahead.

3 Q When you say your file, were these
4 handwritten notes?

5 A Memos that were written.

6 Q When you say "memos," were they
7 handwritten memos or were they typed up memos?

8 A Typed memos.

9 Q Okay.

10 Were all of those -- are those maintained
11 in your private file or are those maintained
12 elsewhere?

13 MS. PANICO: Objection to form.

14 A They were in my private file and I submit
15 then I gave copies to our Village legal
16 counsel.

17 Q And your Village legal counsel, who was
18 that?

19 A Howard Colton.

20 Q And when you say you gave copies to your
21 counsel, how many pages were they, if you can
22 recall?

23 A Give or take 20.

24 Q You said you looked at those today?

25 A Yes. I did look at them this morning

1 V. Dinielli - 1/4/17

2 before I left the house.

3 MR. HENRY: At this time, I would like to
4 call for the production of those documents and
5 those records that the witness has testified
6 that she looked at today.

7 In light of the limited discovery
8 schedule, Counsel, and the ease of accessing
9 those records in that the witness testified she
10 reviewed them today, would you have any
11 objection in getting those to me sooner than
12 later?

13 MS. PANICO: Those records have already
14 been produced.

15 MR. HENRY: Well, I'm not sure if they
16 have and I'm not sure if they are the same ones
17 because, as this witness just testified, those
18 records that she reviewed were records that
19 were, in part, in her own file that she
20 maintained and elsewhere, as she testified.
21 And she also testified that she provided those
22 records to someone other than you.

23 So again, just to avoid any confusion, I
24 know there were some initial productions made
25 that contained the contents of Ms. Skates'

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2 file. I believe that our demand is limited to
3 those records that this witness testified she
4 looked at today, which may include records that
5 are in her own file, as she just testified to.

6 So my question again is: Would you have
7 any objection with getting those to us in a
8 relatively expedient matter?

9 MS. PANICO: I am not the individual who
10 is being deposed here today; however, I will
11 answer you the same way that I did previously,
12 which is that those records have already been
13 produced.

14 MR. HENRY: Okay.

15 So my question is: Will you, as you
16 represent this witness here, and we're making
17 that demand upon you as her counsel, how soon
18 do you think you can get the documents that
19 this witness claims she reviewed today?

20 MS. PANICO: Clearly you're not
21 understanding my prior response. Those records
22 have already been produced.

23 MR. HENRY: Well, how would you know that
24 if she said she looked at them today and gave
25 them to someone other than you?

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2 MS. PANICO: Because I already spoke --
3 again, I'm not the witness here. If you want
4 to ask Ms. Dinielli --

5 MR. HENRY: We're making a document --
6 (Counsel speaking simultaneously.)

7 MS. PANICO: I'm telling you that I've
8 already produced the records. Period.

9 MR. HENRY: Let the record reflect Counsel
10 is raising her voice and grasping our table,
11 conference room table. But we're going to move
12 forward, nevertheless.

13 MS. PANICO: Let the record reflect that I
14 am not raising my voice and I am not -- what
15 was the word that you used? Rasping. Rasping
16 on the conference room table.

17 MR. HENRY: Grasping.

18 MS. PANICO: Grasping.

19 BY MR. HENRY:

20 Q Can you describe your first interaction
21 with Ms. Skates?

22 A Human Resources sent her over to our
23 department and I was told that she would be
24 working in our department.

25 Q When you say "Human Resources sent her

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2 over," do you have a particular person within
3 Human Resources that sent her over?

4 A Conor Kiran. He's the executive
5 director.

6 Q When was she sent over to your department?

7 A I believe it was April 2013.

8 Q And was she sent from a prior from -- a
9 previous department, from another department?

10 A I believe so.

11 Q What department was that?

12 A I believe it was the assessor's office.

13 Q So why was she transferred to your
14 department?

15 A That wasn't my -- I don't know.

16 Q What was her prior position?

17 A I don't know.

18 Q But you knew that it was within the
19 assessor's office; isn't that right?

20 A That's what I heard.

21 Q Now, was her transfer to you considered a
22 promotion?

23 A No.

24 Q What was it considered?

25 A I don't know. I don't work in Human

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2 Resources.

3 Q Would you consider it a demotion?

4 A I don't know what her duties were in the
5 other department. I wasn't involved in that
6 conversation.

7 Q So who was -- well, withdrawn.

8 What year was that?

9 A 2013.

10 Q And you said that Conor --

11 A Conor Kiran.

12 Q Can you spell his name, please?

13 A C-O-N-O-R. K-I-R-A-N.

14 Q What's his title?

15 A He's the director of Human Resources.

16 Q So would you consider the transfer to
17 the -- the transfer from the assessor's office
18 to the -- you said you were in the
19 recreation --

20 A Department of Recreation.

21 Q Would you consider that to be a promotion?

22 MS. PANICO: Objection. Asked and
23 answered.

24 Q You may answer.

25 A Not my --

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2 MR. HENRY: I would request that, if
3 counsel could -- if you want to note your
4 objection, that's fine. But as far as the
5 adding my appendage to it, I would,
6 respectfully, request that you not do so.

7 MS. PANICO: I'm actually required to
8 state the reason for my objection.

9 MR. HENRY: Although I understand you're
10 preserving your rights, I would just ask that
11 you limit the speaking components of the
12 objection because it makes it difficult for me
13 to continue my line of questioning.

14 MS. PANICO: That's exactly why I just
15 asked the Court to make clear for you because
16 clearly you had that misunderstanding, that me
17 saying "objection, asked and answered" or me
18 saying "objection to form," that's not a
19 speaking objection. I'm actually required to
20 do that under the Federal Rules to preserve the
21 objection. So I will continue to do that.

22 MR. HENRY: And I will continue to make my
23 record.

24 BY MR. HENRY:

25 Q So what year was it that you began with

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2 Ms. Skates?

3 A 2013.

4 Q Do you recall the month?

5 MS. PANICO: Objection. Asked and
6 answered.

7 Q Have I asked you what month?

8 A Yes.

9 Q What month was that?

10 A April.

11 Q My apologies if I did. Counsel's
12 objections are throwing me off my outline.

13 Do you recall what Ms. Skates' position
14 was when she began in the recreation
15 department?

16 A He was a rec attendant. That's a civil
17 service title.

18 Q You were her direct manager; is that
19 right?

20 A I'm the manager of the facility.

21 Q As part of her position as a rec
22 attendant, what were some of her
23 responsibilities?

24 A Rec attendant is a very broad title. It
25 encompasses the whole facility. Maintenance,

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2 activities, housekeeping, setup, breakdown.

3 All of our daily activities.

4 Q And that would be a demoted position for
5 someone who was previously in the assessor's
6 office?

7 MS. PANICO: Objection. Asked and
8 answered.

9 A I don't know what her title or I don't
10 know what she was doing in the assessor's
11 office.

12 Q Do people generally request transfers from
13 the assessor's office to the recreational
14 department?

15 MS. PANICO: Objection. Calls for
16 speculation.

17 A I never -- not while I was there. I don't
18 know of any.

19 Q Would you yourself have requested --
20 withdrawn.

21 Did there ever come a time that -- what
22 type of training did you receive prior to
23 becoming the supervisor of this department, of
24 the recreational department?

25 A I was a manager of a similar facility for

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2 20 years.

3 Q What facility was that?

4 A Sportime in Lynbrook.

5 Q Why did your employment there end?

6 A I was offered this position.

7 Q So your testimony here today is that you
8 only left Sportime in Lynbrook because of the
9 opportunity in Freeport?

10 A Yes.

11 Q Okay.

12 Did you have to submit a resume or a job
13 application as part of this --

14 A Yes.

15 Q -- part of the application process in
16 Freeport?

17 A Yes.

18 MR. HENRY: At this time, I would like to
19 call for the production of this witness' job
20 application with Freeport.

21 BY MR. HENRY:

22 Q You said you've been with them about seven
23 years?

24 A Yes.

25 Q So would that have been in 2010 or '09?

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2 A Yes.

3 MR. HENRY: Counsel, in light of the
4 limited discovery schedule and our forthcoming
5 stipulation to depose the remaining witnesses,
6 would you be able to provide me, I guess, a
7 timeline or an approximation or agree to
8 provide me with a copy of this witness' job
9 application?

10 MS. PANICO: I'm going to ask that you
11 follow up in writing and I'll respond to you
12 then.

13 MR. HENRY: Well, the rules -- I'll cite
14 the rules for you that we are able to make
15 document requests during the course of the
16 deposition. And those document requests, I
17 believe, will be treated or should be treated
18 as rules -- I'm sorry -- as demands that are
19 made during the course of a deposition. I'll
20 give you the rule now. I'll put it on the
21 record. And I'll also ask that the Court
22 Reporter annex in the rear of this deposition
23 transcript document requests and label this one
24 Number 2. And as far as the first document
25 request, we can have that a Number 1.

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2 Counsel, will you like me to read that
3 rule into the record for you?

4 MS. PANICO: I don't need you to read the
5 rule into the record. No. Thank you.

6 MR. HENRY: So my question again is: Do
7 you think that, in light of the limited
8 discovery period, that you may be able to get
9 that to me? Or when do you reasonably think
10 that you would be able to get it to me?

11 MS. PANICO: Again, I'm asking that you
12 follow up in writing and I'll respond to you
13 appropriately then.

14 MR. HENRY: I just want to go ahead and
15 just note this for the record, then, just so
16 that the record is clear.

17 So there's two parts to it, but in sum and
18 substance, rule -- Federal Rule Civil Procedure
19 30 provides that requests may be made for
20 documents. And then there's another rule here
21 which is Rule 34, which also provides that we
22 are able to make these requests for the
23 production of documents; also provides that
24 Counsel should respond within the time provided
25 under that rule, which, I believe, is 30 days.

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2 So my question to Counsel was: In light
3 of the limited discovery period in the
4 forthcoming stipulation, would counsel agree to
5 produce those documents in a shortened period
6 than the 30 days that the rules permit?

7 MS. PANICO: Are you asking me again for
8 the third time?

9 MR. HENRY: Yeah. I'm asking if you would
10 be willing to -- the rules allow that you're
11 able to provide a response to that request
12 within 30 days.

13 My question to you is: In light of
14 forthcoming close of discovery and our
15 stipulation, would you be willing to -- would
16 you be amenable to getting me the -- any
17 documents requested during this deposition in a
18 shortened period than the rules provides?

19 MS. PANICO: No. Not at this time.

20 MR. HENRY: So you'll get it to me within
21 the time frame that the rule provides?

22 MS. PANICO: I will respond to your
23 request within the time period, yes. That
24 doesn't necessarily mean that I'm producing it.

25 MR. HENRY: Okay. We would just ask that

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2 a privilege log accompany any objection that
3 you feel that you're grounded in.

4 BY MR. HENRY:

5 Q As part of your position as the supervisor
6 of the rec department in Freeport, did you ever
7 receive any training from Freeport in -- with
8 regards to the Family Medical Leave Act?

9 A No.

10 Q Were you ever provided with any training
11 as it relates to the Americans with
12 Disabilities Act?

13 A No.

14 Q Were you ever provided with any training
15 whatsoever?

16 A No.

17 MR. HENRY: At this time, though we've had
18 a number of discussions pertaining to
19 defendant's deficiencies, we had requested from
20 defendant its policies including FMLA policies,
21 all policies in Document Request No. 15,
22 Document Request No. 20, and as of date, those
23 have not been produced. So we will be making
24 the necessary application as it relates to
25 those documents unless Counsel -- unless

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2 Counsel can advise as to when she may get us
3 those documents.

4 MS. PANICO: Mr. Henry's misrepresentation
5 or Mr. Henry's representation regarding whether
6 or not those records have or have not been
7 produced is inaccurate. The Village's FMLA
8 policy has, in fact, been produced.

9 What was the other policy that you're
10 seeking?

11 MR. HENRY: And what was the Bates numbers
12 on that?

13 MS. PANICO: I don't have that in front of
14 me, but it was produced.

15 MR. HENRY: Well, we don't have any record
16 of the FMLA policy. And if I'm incorrect, I
17 would just request that you let me know the
18 Bates numbers of that production by later
19 today.

20 MS. PANICO: I'm going to request that you
21 look back at what we produced and --

22 MR. HENRY: I don't have it.

23 MS. PANICO: It has been produced.

24 MR. HENRY: So if you can point me to
25 where it's been produced, that would be greatly

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2 appreciated. Because based upon my records, I
3 don't have that. So if you can give me the
4 Bates numbers by tomorrow, that would be
5 greatly appreciated.

6 We will reserve our right to seek --
7 continue this deposition, as needed, to discuss
8 issues within that policy.

9 MS. PANICO: We will not be re-conducting
10 or holding this deposition open with respect to
11 the FMLA policy since that has already been
12 produced.

13 MR. HENRY: Well, we don't have it and you
14 don't have any record of producing it to me.

15 MS. PANICO: That's not correct.

16 Mr. Henry, if you don't have it, then it's
17 only because your office lost it.

18 MR. HENRY: Well, what's the Bates numbers
19 for it?

20 MS. PANICO: You want me to call my
21 office? We'll take a break right now.

22 MR. HENRY: No. Just get it to me by
23 tomorrow. If you're willing to call your
24 office now, then I'm sure you'll be willing to
25 call them later.

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2 MS. PANICO: I just want to make it clear
3 that we are not re-producing Ms. Dinielli with
4 respect to the FMLA policy because it has
5 already --

6 MR. HENRY: I have seven hours. I have
7 one day.

8 MS. PANICO: Okay.

9 MR. HENRY: I have a full seven hours with
10 her, so...

11 MS. PANICO: Okay. But we're not going to
12 be producing her with respect to that --

13 MR. HENRY: I'm not going to argue with
14 you. With the same enthusiasm that you were
15 going to be calling your office now, I hope you
16 have that same enthusiasm tomorrow to ensure
17 that I get the Bates numbers to that policy.

18 BY MR. HENRY:

19 Q Ms. Dinielli, were you ever provided with
20 any policies and procedures --

21 MS. PANICO: Objection.

22 MR. HENRY: Let the record reflect, again,
23 that I'm not even able to get my question out.
24 Counsel's objections have been frequent and
25 fruitful. Again, bordering oppressive. And

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2 although I don't want to call the Court, I may
3 have to call the Court again.

4 Please allow me to finish my question.

5 May I have a readback, please, of the
6 question that I attempted to -- nevermind.
7 I'll try to --

8 MS. PANICO: That's because you did
9 complete the question.

10 MR. HENRY: No, I didn't.

11 BY MR. HENRY:

12 Q Were you trained on how to deal with -- or
13 rather did your employer ever provide you with
14 policies and procedures about discrimination in
15 the workplace?

16 A I believe so, yes.

17 MS. PANICO: Same objection.

18 MR. HENRY: Again, what is the -- what is
19 your grounds for your objection?

20 (Court Reporter interruption.)

21 MS. PANICO: There's not discrimination
22 component to this lawsuit anymore. I'm
23 preserving my objection for the record.

24 MR. HENRY: I'm not asking about
25 discrimination. I'm asking if she was provided

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2 with policies and procedures about
3 discrimination in the workplace. It does not
4 only mean discrimination in terms of what you
5 believe to be a part of the lawsuit or not. It
6 also deals with disability discrimination;
7 discrimination on the basis of retaliation;
8 discrimination on a number of basis.

9 If you would allow me to finish my
10 question without noting these frivolous
11 objections, then we can get through this.

12 MS. PANICO: I did not direct my client
13 not to answer. That's number one. Number two,
14 a ADA discrimination is no longer a component
15 of this case.

16 Retaliation under --

17 MR. HENRY: Your speaking objections are
18 ridiculous.

19 (Counsel speaking simultaneously.)

20 MR. HENRY: This is an FMLA claim where we
21 are alleging that she was discriminated against
22 because of her disability.

23 MS. PANICO: There's no ADA claim.

24 MR. HENRY: There's a FMLA claim.

25 MS. PANICO: That's not disability

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2 discrimination.

3 MR. HENRY: FMLA requires that there be a
4 qualified disability. I'm asking this witness
5 if she was provided with any policies and
6 procedures pertaining to discrimination in the
7 workplace.

8 I only ask that you please refrain from
9 the meritless objections.

10 MS. PANICO: I'm permitted to make an
11 objection on the record. I'm allowing my
12 client to answer.

13 You're the one that continues to --

14 MR. HENRY: I'm really not.

15 BY MR. HENRY:

16 Q Were you ever provided with any policies
17 and procedures about discrimination in the
18 workplace at Freeport?

19 A Upon employment, yes.

20 Q And do you know the title of those
21 policies?

22 A No.

23 Q Do you know how many pages they were?

24 A I don't remember.

25 Q How long ago was that?

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2 A Seven years ago.

3 Q Are there any ongoing training
4 requirements with respect to discrimination and
5 with respect to being familiar with the laws?
6 Does Freeport have any ongoing training?

7 A Yes, they do.

8 Q Do you participate in those trainings?

9 A Yes, I do.

10 Q What is the name of those trainings, if
11 you recall?

12 A I don't recall.

13 Q Is it an online training?

14 A No.

15 Q What type of training is it?

16 A A training with a lector.

17 Q How often is this training given?

18 A Periodically. I can't really say.

19 Q When was the last time you had such
20 training?

21 A There was a training a couple of months
22 ago.

23 Q How frequently do they give it?

24 A Maybe once a year, twice a year.

25 Q Are you graded on your performance during

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2 these trainings?

3 A No.

4 Q What are some of the subjects covered?

5 A The last one was violence in the
6 workplace.

7 Q Do you recall ever having any training
8 with respect to disabilities, employees with
9 disabilities?

10 A Training, no.

11 Q What were you provided with respect to
12 employees with disabilities?

13 A I wasn't provided with anyone.

14 Q Did you bring any experience with or
15 knowledge in the area of employees with
16 disabilities to this position at Freeport?

17 A Well, 20 years of working in another
18 facility, I had my -- I believe I come across
19 it.

20 Q Were you provided any direct training for
21 dealing with employees with disabilities at
22 Sportime in Lynbrook?

23 A Direct training, no.

24 Q How about informal training?

25 A Informal training, yes.

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2 Q Okay.

3 Now, did you have any -- were you provided
4 with a copy of the Family Medical Leave Act
5 during your time at Sportime in Lynbrook?

6 A Was I provided with it, no.

7 Q Were you provided with a copy in Freeport?

8 A Was I provided with it, no.

9 Q So how would you know that you received
10 training informally if you never were provided?

11 MS. PANICO: Objection to form.

12 A Topic was discussed and I read up on it
13 myself over the years.

14 Q So your testimony here today is the scope
15 of your training, as it relates to the FMLA, is
16 limited to topics discussed and self-directed
17 study?

18 MS. PANICO: Objection to form.

19 Q You may answer.

20 A Well, it's related to as need.

21 Q So the scope of your -- the scope of your
22 training, as you testified here today as it
23 relates to the FMLA, is topics discussed, as
24 needed and -- what was the other?

25 A And my own.

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2 Q And your own-self study.

3 MS. PANICO: Objection to form.

4 Q Is that right?

5 A Basically, yes.

6 Q Did there ever come a time that you
7 learned of a complaint that Ms. Skates filed
8 against you with the New York State Division of
9 Human Rights. Withdrawn.

10 Did there ever come a time that you became
11 aware of a complaint that Ms. Skates filed with
12 the New York State Division of Human Rights
13 against the Incorporated Village of Freeport?

14 A Yes.

15 Q How many complaints did you hear that she
16 filed?

17 A I don't know. I was given -- I don't
18 know.

19 Q Now, this complaint that you learned of,
20 when did you learn of it?

21 A Within the last couple of years.

22 Q Were you named in that complaint?

23 A I don't recall.

24 Q Did there ever come a time that you
25 learned of a complaint that was filed against

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2 you by Ms. Skates while she was still an
3 employee with Freeport?

4 A No.

5 Q So your testimony here today is at no
6 point in time Ms. Skates filed a complaint
7 against you while she was working at Freeport?

8 MS. PANICO: Objection. Asked and
9 answered.

10 Q You may answer.

11 A Not that I'm aware of.

12 Q Did there come a time that you became
13 aware that Ms. Skates had a disability?

14 A No.

15 Q So your testimony here today is that
16 there's no point in time during the time that
17 Ms. Skates worked in your department that you
18 learned that she had a disability?

19 A No.

20 Q Did there come a time that you learned
21 that Ms. Skates required a leave because she
22 had a disability?

23 A No.

24 Q Did there ever come a time that Ms. Skates
25 made a request for you for sick leave or

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2 medical leave because of her disability?

3 MS. PANICO: A request?

4 MR. HENRY: Yes.

5 MS. PANICO: Objection to form.

6 Q You may answer.

7 A Because of -- can you restate?

8 MR. HENRY: May I have a repeat of that
9 last question, please.

10 (Whereupon, the requested record was read
11 back by the Court Reporter.)

12 A No.

13 Q Did there ever come a time that Ms. Skates
14 presented to you a request for medical leave or
15 sick leave?

16 A A request, no.

17 Q Can you describe the recreational center's
18 parking lot during the time -- during the
19 period of 2013, beginning January 2013, ending
20 December 2013?

21 A Parking lot is in the front of the
22 building. It is very large. I don't want to
23 estimate how many spots, but it's a very, very
24 large parking spot in the front of the
25 building.

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2 Q Is that parking spot used for employees
3 and the general public?

4 A Yes.

5 Q Are there any portions of that parking
6 lot, as you remember in 2013, that was just
7 limited to employees' usage?

8 A No.

9 Q Can anyone just pull in and park?

10 A Yes.

11 Q Are there any sections of that parking lot
12 designated for staff and employees?

13 A No.

14 Q Are there any key access or access cards
15 or anything of that nature required to access
16 that parking lot?

17 A No.

18 Q Can you describe some of the duties that
19 Ms. Skates' title had?

20 MS. PANICO: Objection to form.

21 A Her duties were to maintain -- to do
22 general housekeeping in all of the areas of the
23 recreation center.

24 Q Now, with respect to the position that
25 Ms. Skates was transferred from in the

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2 assessor's office, did that position in the
3 assessor's office include sweeping?

4 A I have no idea.

5 Q Dusting?

6 A No idea.

7 Q Was it janitorial in nature?

8 A Never worked in the assessor's office. No
9 idea.

10 Q The position that Ms. Skates had in the
11 recreational center, was that a janitorial
12 position?

13 A It was a housekeeping position.

14 Q Did it have janitorial components?

15 MS. PANICO: Objection to form.

16 A We all maintained the building.

17 Q Did her position include sweeping?

18 A Yes.

19 Q Dusting?

20 A Yes.

21 Q Painting?

22 A Maybe.

23 Q Cleaning recreational center equipment?

24 A Yes.

25 Q Mopping floors?

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2 A Yes.

3 Q Cleaning paint off walls and tables?

4 A Yes.

5 Q Cleaning bathrooms?

6 A Yes.

7 Q Cleaning the recreational center's parking
8 lot?

9 A Yes.

10 Q What was Ms. Skates' title?

11 A Recreation attendant.

12 Q How many recreation attendants did you
13 have at that time in 2013?

14 A Possibly five.

15 Q Did all of their responsibilities include
16 all of the items that I just listed?

17 A Yes.

18 Q So your testimony here today is that every
19 rec attendant serving, as far as you could
20 recall, in 2013 maintained the responsibilities
21 listed including cleaning the recreational
22 parking lot?

23 A Some. Not everyone might do that. But,
24 yes, we all would do that. I've done it
25 myself.

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2 Q Did you maintain the discretion to
3 determine what job duties Ms. Skates would have
4 had during that time?

5 A I and my rec leaders.

6 Q So you could have came and said, perhaps,
7 Ms. Skates you're going to clean the parking
8 lot today, right?

9 A I wouldn't have done that.

10 Q But you could have?

11 A I could have, but I had other managers
12 below me or supervisors below me that would
13 have done that. I really wasn't involved with
14 her to tell her what to do.

15 Q Well, why don't you give me an
16 organizational chart, with you in the middle,
17 of downward organizational chart during the
18 period of 2013.

19 A I am the manager. I have two rec leaders.

20 Q And who were they?

21 A John Henry and James Beauford. Those are
22 senior rec leaders. One rec leader, which is
23 Carol Murphy.

24 Q And so you're the manager. Two rec
25 leaders.

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2 A Two senior rec leaders.

3 Q Two senior rec leaders.

4 A Yes.

5 Q And then beneath them?

6 A One rec leader.

7 Q So beneath them, between the two senior
8 rec leaders would be one rec leader?

9 A Yes.

10 Q And who was that?

11 A Carol Murphy.

12 Q And then?

13 A Then underneath that are -- well, there's
14 a building maintenance supervisor. Just
15 another person. He would probably be the same
16 level as the rec leaders. And then I have
17 recreation attendants, laborers.

18 Q Where did Ms. Skates fit in this?

19 A She was a rec attendant.

20 Q So she would have received her command or
21 her chain of command would have been the
22 building maintenance?

23 A No. It would be from the senior rec
24 leaders.

25 Q So Ms. Skates would have received, as a

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2 rec attendant, instruction from John Henry or
3 James Beauford?

4 A Yes.

5 Q Would you also have given her instruction?

6 A We all work together.

7 Q My question is: Would you have also given
8 her instruction?

9 A If need be.

10 Q So when she made requests, who would she
11 make those requests to?

12 A Depends on the request.

13 Q If she made a request pertaining to sick
14 leave, who would that be?

15 A It would be me.

16 Q If she made a request for a change of
17 assignment, who would that be?

18 A A change of duty?

19 Q Change of duty. Who would that be?

20 A Senior rec leader.

21 Q Would she also make those requests to you
22 too?

23 A If she chose to, she could.

24 Q Had she ever made any such requests to
25 you?

1 V. Dinielli - 1/4/17

2 A Not that I recall.

3 Q So she complained or had a complaint about
4 something, who would she raise that complaint
5 with?

6 MS. PANICO: Objection. Calls for
7 speculation.

8 Q In the organizational chart that you just
9 provided me, who would Ms. Skates, as a rec
10 attendant, go to with her complaints?

11 MS. PANICO: Same objection.

12 A She would go to one of the senior rec
13 leaders if they were on hand. If they weren't
14 she certainly could come to me. Door was
15 always open.

16 Q Was there a policy that provided the chain
17 of command when an employee has a complaint?

18 A Policy, no.

19 Q Or a guideline?

20 A When she came into our department, she was
21 introduced to all of the people. And so she
22 knew who the people -- the acting managers and
23 the supervisors were.

24 Q So it's your testimony here today that
25 Ms. Skates only was able to rely on her own

1 V. Dinielli - 1/4/17

2 knowledge in terms of how she would raise a
3 complaint or a concern?

4 MS. PANICO: Objection to form.

5 Q Is that your testimony?

6 A She worked for the Village. So she knew
7 we had a Human Resource department and she knew
8 who the people in our building were.

9 Q James Beauford, what's his race?

10 A What is his race?

11 Q Yes.

12 A He's half white, half black.

13 Q And how do you know this?

14 A Because I've seen his mother and father.

15 Q John Henry, what's his race?

16 A White.

17 Q And how do you know this?

18 A Because he's white.

19 Q Have you seen his mother and father?

20 A No, I haven't.

21 Q Did there ever come a time that you
22 learned that Ms. Skates complained about being
23 verbally insulted or abused by her co-workers
24 during the period of 2013?

25 A That she was -- no.

1 V. Dinielli - 1/4/17

2 Q Did there ever come a time that Ms. Skates
3 complained about you mistreating her during the
4 course of -- beginning in 2013, ending in 2013?

5 A Complained to me?

6 Q Complaining about you, have you ever
7 learned that --

8 A No.

9 Q How about mistreatment?

10 MS. PANICO: Objection to form.

11 A I didn't mistreat her. I wasn't directly
12 working with her.

13 Q What's your understanding of the term
14 "comp time"?

15 A Comp time?

16 Q Yes.

17 A It's anything past your regular hours that
18 you're not being paid for and that you're
19 taking in time to use in the future.

20 Q How about vacation days?

21 A Time that is designated by the Village to
22 its employees.

23 Q Is there any particular policy or manual
24 or writing anywhere that contains information
25 about vacation days and comp time that you're

1 V. Dinielli - 1/4/17

2 aware of?

3 A Every employee has an attendance card.

4 Q Some of your -- as part of your duties,
5 were you able to approve or deny vacation days
6 or comp time requests?

7 A Yes.

8 Q Did you look at a policy when you made
9 such decisions?

10 A The union book, the union manual.

11 Q Are you familiar with the individual by
12 the name of Victoria Grotton?

13 A Yes.

14 Q Who is that?

15 A She's another rec attendant, full-time rec
16 attendant that works for us.

17 Q Does she still work there?

18 A Yes, she does.

19 Q Is there any particular reason why you
20 would have discussed Ms. Skates' vacation days
21 and comp time in the presence of Victoria
22 Grotton?

23 MS. PANICO: Objection to form.

24 A I didn't.

25 Q So is it your testimony here today that

1 V. Dinielli - 1/4/17

2 you never speak to Victoria Grotton about
3 Ms. Skates' comp time or vacation time?

4 A She was at the far end of a room, of a
5 large room, of a skate lounge, when I was
6 walking in the back door and I approached
7 Mrs. Skates.

8 Q When you say you approached Mrs. Skates,
9 can you elaborate?

10 A I was walking in. She was at the front of
11 the room and I had the opportunity to speak to
12 her.

13 Q Well, it must have been a loud
14 conversation for Victoria Grotton to hear it,
15 right?

16 MS. PANICO: Objection to form.

17 A I don't know that she heard it.

18 Q Well, you don't know that she didn't hear
19 it, right?

20 A I don't know.

21 Q Why -- do you consider a discussion about
22 vacation days and comp time a private one with
23 an employee? Do you consider that to be a
24 conversation that's private in nature?

25 A Not really, no.

1 V. Dinielli - 1/4/17

2 Q So your testimony here today is that
3 discussions that deal with an employee's
4 vacation days and comp time days that you, as
5 the supervisor, would have with that employee
6 is not one that's private in nature?

7 A Broadly, no.

8 Q Did you have an office during that time?

9 A I did.

10 Q Did your office have a door?

11 A Yes, it did.

12 Q Why didn't you have that discussion in the
13 office where you could have closed the door?

14 A Because I very rarely saw Ms. Skates.

15 Q So instead of having a conversation in
16 your office where you could have closed the
17 door, you decided to have it in a big room?

18 A It wasn't a discussion.

19 Q You decided to have a discussion or
20 approach Ms. Skates in a big room where there
21 was someone else present, right?

22 MS. PANICO: Objection to form.

23 A It was a statement.

24 Q Well, couldn't you had made the statement:
25 "Ms. Skates, I would like to talk to you in my

1 V. Dinielli - 1/4/17

2 office"? Couldn't you have made that
3 statement?

4 MS. PANICO: Objection. Calls for
5 speculation.

6 Q You may answer.

7 A I could have.

8 Q But instead you chose to have such a loud
9 statement -- to make such a loud statement that
10 someone on the far end of the room, Victoria
11 Grotton, could have or could not have heard it,
12 right?

13 MS. PANICO: Objection to form.

14 Q Isn't that right?

15 MS. PANICO: You're misrepresenting --

16 A It wasn't loud.

17 Q You may answer the question.

18 A It wasn't loud.

19 Q Well, wouldn't you agree that something
20 that's loud to me may not be loud to you?

21 A Yes.

22 Q So instead of having a private discussion
23 with an employee in your office with a door you
24 could have closed, you decided to make a loud
25 statement, loud enough for someone on the far

1 V. Dinielli - 1/4/17

2 end of the room to hear it, right?

3 MS. PANICO: Objection to form.

4 A I don't believe it was loud and I don't
5 believe she heard it.

6 Q Well, as you're sitting here today, you
7 have no idea whether she heard it or not,
8 right?

9 A I don't believe she heard it.

10 Q Did there ever come a time that you
11 threatened that you would strip Ms. Skates of
12 her accumulated time?

13 A I passed on information that was given to
14 me from Human Resources.

15 Q Who gave you this information?

16 A Conor Kiran.

17 Q What information was provided to you and
18 when?

19 A Her attendance card was not to be found
20 and I was told by Human Resources to let her
21 know that we would -- we were starting at no
22 time.

23 Q And did you let her know that? When did
24 that conversation happen, what year or --

25 A I don't recall.

1 V. Dinielli - 1/4/17

2 Q Was it in or around the year of 2013?

3 A Yes.

4 Q Okay.

5 Did you have that conversation with
6 Ms. Skates in a private -- in your private
7 office with a door? Was that another statement
8 you made in a loud room?

9 MS. PANICO: Objection to form.

10 A I believe was in my office.

11 Q I'm sorry?

12 A I believe it was in my office.

13 Q Did you consider that conversation a
14 private one, private in nature?

15 A I don't know. I really don't know.

16 Q This we know.

17 So is there any particular reason why you
18 threatened to strip her time away when you
19 really don't know?

20 MS. PANICO: Objection to form.

21 Please stop mischaracterizing my client's
22 testimony.

23 Q You may answer.

24 A I didn't threaten anything. I was passing
25 on information from Human Resources.

1 V. Dinielli - 1/4/17

2 Q So you were the middleman or middle-woman.

3 MS. PANICO: Objection to form.

4 A One could say.

5 MS. PANICO: Same objection.

6 Q Isn't that right?

7 A Yes.

8 Q You were just passing information along.

9 A I'm not Human Resources.

10 Q Did you ever question what information
11 Human Resources gives you to pass on or do you
12 just pass it on?

13 A I pass on Village policy from Human
14 Resources.

15 Q So the decision to threaten Ms. Skates
16 with stripping her of her accumulated time was
17 one that came from higher up?

18 MS. PANICO: Objection to form.

19 That's not what my client testified to.
20 Please stop mischaracterizing her testimony.

21 Q You may answer the question.

22 A Human Resources advised me of how we were
23 going to move forward.

24 Q Human Resources, are they in a higher
25 position than you are?

1 V. Dinielli - 1/4/17

2 A I wouldn't say higher but they handle
3 different -- they have different, you know --

4 Q Human Resources, they could fire you,
5 right?

6 A Yes.

7 Q So wouldn't they have more power than you?
8 You can't fire yourself.

9 A I don't believe they could fire me on
10 their own. That would have to come from our
11 mayor.

12 Q But they would handle it, right?

13 A They would handle it, yeah.

14 Q So in essence Human Resources is its
15 own --

16 A I guess so. I never thought about it.
17 Yes.

18 Q So you received marching orders from Human
19 Resources to threaten Ms. Skates with stripping
20 heard of her accumulated time, right?

21 MS. PANICO: Objection. Please stop
22 mischaracterizing testimony.

23 Q Didn't Human Resources give you the
24 instruction to threaten to strip her time?

25 A They didn't tell me to threaten anybody.

1 V. Dinielli - 1/4/17

2 Q You threatened her on your own?

3 A I passed on information.

4 Q That information was if you don't give me
5 your attendance card, we're taking away your
6 accumulated time, right?

7 A That's not how it was said.

8 Q How was it said?

9 A It was said we need your attendance card.
10 Do you have any idea where it was.

11 Q Or?

12 A Or is.

13 Q What would be the consequence if she
14 didn't?

15 A I never -- that wasn't the conversation.
16 The conversation is we need your attendance
17 card. Attendance card could not be found. I
18 said if the attendance card -- if we don't find
19 the attendance card, this is what Human
20 Resources has said.

21 Q And what did Human Resources say?

22 A That we're going to -- we're going to have
23 to start at zero.

24 Q So isn't that a threat?

25 A I don't believe so. It's a statement.

1 V. Dinielli - 1/4/17

2 Q So if I tell you that if you don't do
3 this, then I'm going to do that, isn't that a
4 threat that that is going to happen?

5 MS. PANICO: Objection to form.

6 Please -- again, stop mischaracterizing
7 the testimony.

8 A I didn't say "if you don't do this." I
9 said "if we don't come up with the attendance
10 card" --

11 Q Then?

12 A -- "then this is what Human Resources has
13 instructed me to tell you."

14 Q This is the threat that Human Resources
15 told me to tell you?

16 MS. PANICO: Objection to form.

17 Q Isn't that right?

18 A I don't call it a threat.

19 Q What would you call it?

20 A I don't call it a threat.

21 Q What do you recall it?

22 A A directive.

23 Q An ultimatum?

24 A A directive.

25 Q You received a directive from a higher

1 V. Dinielli - 1/4/17

2 source, right?

3 A Uhm-uhm.

4 Q Did there ever come a time that you later
5 learned that that directive was incorrect?

6 MS. PANICO: Objection to form.

7 A Incorrect, no.

8 Q Did there ever come a time that you
9 learned that Ms. Skates deserved the credit for
10 her hours that she accumulated?

11 A I might have been given new information.
12 I don't recall what the new information was.

13 Q But that -- did that new information
14 include a finding that Ms. Skates' attendance
15 card was accurate?

16 MS. PANICO: Objection to form.

17 A I don't know.

18 Q Well, did she lose her time?

19 A I don't know. I don't recall.

20 Q So your testimony here today is that you
21 don't recall if Ms. Skates lost her accumulated
22 time?

23 A I don't -- I don't recall exactly what
24 time she claimed to have or she said she had
25 and what time she actually received, no. She

1 V. Dinielli - 1/4/17

2 did receive time.

3 Q Who is Peter Renki?

4 A At the time he was the union president.

5 Q Would there ever come a time during that
6 period in 2013 that you would have possibly met
7 with Mr. Renki?

8 A He might have been with Ms. Skates. He
9 doesn't meet with me, no.

10 Q Did there ever come a time that had you a
11 meeting with Mr. Renki, Mr. Beauford and
12 yourself?

13 A Yes. Well, not -- and Ms. Skates.

14 Q And Ms. Skates?

15 A Yes.

16 He represents Ms. Skates. He doesn't work
17 with us.

18 Q During that meeting, was there an
19 acknowledgment that Ms. Skates deserved the
20 credits for the hours that you directed or gave
21 her a directive that she would have lost?

22 MS. PANICO: Objection to form.

23 Q Isn't that right?

24 A Human Resources was there. I was just
25 present at the meeting.

1 V. Dinielli - 1/4/17

2 Q But wasn't that right?

3 A Was what right?

4 Q That during that meeting you or there was
5 an acknowledgment that Ms. Skates deserved the
6 hours that she accumulated.

7 MS. PANICO: Objection to form.

8 Q Right?

9 A It was discussed, yes.

10 Q And that acknowledgment was made during
11 that meeting; isn't that right?

12 A Determination was made as a result of that
13 meeting, yes.

14 Q So, in fact, the directive that you gave
15 the threat was based on incorrect information,
16 right?

17 MS. PANICO: Objection to form.

18 A No. It was changed.

19 Q It was based on incomplete information,
20 right?

21 MS. PANICO: Objection to form.

22 A It was updated.

23 Q So it was based on outdated information,
24 right?

25 A No.

1 V. Dinielli - 1/4/17

2 Q Well, how could you update something that
3 wasn't outdated?

4 A It was a meeting to discuss it and this is
5 what was determined from that meeting.

6 Q So it was a reversal from the position
7 they took when you gave the directive, right?

8 MS. PANICO: Objection to form.

9 Q You may answer.

10 A I don't know that "reversal" is the
11 correct word.

12 Q Well, you threatened that she would lose
13 the time?

14 A I didn't threaten.

15 Q You directed?

16 A I passed on information. The information
17 was changed. Agreement was made. An agreement
18 was made as a result of that meeting.

19 Q That agreement was different than the
20 directive that you were ordered to give; isn't
21 that right?

22 A Yes.

23 Q Do you usually give directives that you
24 later change when new information comes?

25 A I've given directives that have changed,

1 V. Dinielli - 1/4/17

2 yes.

3 Q How does that make you feel when your
4 directives have changed? Does that make you
5 angry?

6 A No.

7 Q Does it make you happy?

8 A That's the business.

9 Q What do you mean that's the business?

10 A That's the business. As far as that is
11 how -- that is how Human Resources is worked.
12 That is how the union works.

13 Q Are you in the business of giving out
14 directives that are changed?

15 A I'm in the business of giving out
16 directives as I am told -- instructed to do so.

17 Q And when you give those directives, you're
18 confident that those directives are correct?

19 A I'm hopeful.

20 Q So you hope that your directives are
21 correct?

22 A I hope that the directives that I'm giving
23 stay, yes.

24 Q How would you -- how would you describe
25 hope? Is that a feeling of joy?

1 V. Dinielli - 1/4/17

2 MS. PANICO: Objection to form.

3 Q You may answer.

4 A Maybe I should say confident. I'm
5 confident that the directives that are given to
6 me are the directives that will continue.

7 Q So confident, is that joy? Confident.
8 Enthusiastic.

9 A It's business.

10 Q Positive? Is it a positive feeling?

11 A Not always positive. It's just a feeling
12 of assurance.

13 Q That makes you feel good when you're
14 confident, right?

15 A When I'm confident, when I have -- give a
16 directive, it's not a matter of feeling good or
17 bad. It's just --

18 Q Confidently assured, right?

19 A Yes.

20 Q So then how do you feel when those
21 directives that you're confidently assured
22 about you later learn that those directives are
23 reversed?

24 A Sometimes I agree.

25 Q Well, why would you give a directive that

1 V. Dinielli - 1/4/17

2 you disagreed with to begin with?

3 A Because I was instructed.

4 Q So your testimony here today is that you
5 do what you're told without any second
6 guessing?

7 A Sometimes I have to.

8 Q When you say you have to, describe that a
9 little bit more.

10 A There are people above me, higher-ups, I
11 am part of the big picture and sometimes I am
12 instructed to do things or to say things or to
13 pass on information that I might not always
14 agree with but I follow -- I'm told to follow
15 orders.

16 Q So with respect to the directive that you
17 got with respect to Ms. Skates, right, was that
18 one of the higher-ups that you received a
19 directive from?

20 A I told you Human Resources gave me the
21 directive.

22 Q Did you agree with that directive? As you
23 just testified, sometimes you agree, sometimes
24 you don't.

25 A No, I didn't agree with the directive.

1 V. Dinielli - 1/4/17

2 Q So do you usually give directives that you
3 disagree with because it came from a higher
4 source?

5 A If -- yes.

6 Q What's the fear? Why are you afraid to
7 not disagree with the higher source?

8 A Because I am just a manager of the
9 recreation center. The Village runs the
10 whole -- the mayor and -- the mayor and Human
11 Resources are in charge of the whole Village.
12 I'm just one department in a Village.

13 Q So if you disagree with a decision that
14 the mayor or Human Resources makes pertaining
15 to one of your subordinate employees, you don't
16 feel it's your position to have a voice?

17 MS. PANICO: Objection. Calls for
18 speculation.

19 Q You may answer.

20 A When Ms. Skates' card was not found, I did
21 agree with her that that wasn't her
22 responsibility; however, I do not make the
23 rules.

24 Q So now that we know that you disagree
25 sometimes and one of those times that you

1 V. Dinielli - 1/4/17

2 disagreed was with respect to that card, are
3 there any other things about the Village
4 business that you disagree with as it pertains
5 to Ms. Skates?

6 A Not that I could recall or not that I
7 could say at this point.

8 Q As it relates to the employee parking lot,
9 is there a card key that requires -- that an
10 employee or anyone requires to access the
11 employee parking lot?

12 A There's an -- there's a back lot in the
13 back of the building not different from the
14 front of the building that we spoke about
15 before that has a key pass, an electronic gate
16 that is opened with a pass or by sirens on a
17 police car or a emergency vehicle.

18 Q Who has access to those key cards?

19 A Well, the people that had access to
20 them -- well, that still do -- is the people
21 that open the building, close the building, the
22 girl that makes the monetary deposit with the
23 Village Hall every day, facility mechanic and
24 myself.

25 Q Did there ever come a time where

1 V. Dinielli - 1/4/17

2 plaintiff -- I'm sorry -- where Ms. Skates
3 closed the building?

4 A No.

5 Q How about open the building?

6 A No.

7 Q Is there any reason why she wasn't
8 provided with a key card?

9 A Because she didn't open the building. She
10 wasn't the first one there. She wasn't the
11 last one to leave. She didn't make the money
12 drop during the day. And she's not the
13 manager.

14 Q Well, did she have a key card at any point
15 in time?

16 A No.

17 Q So it's your testimony here today that
18 Ms. Skates never had a key card, never parked
19 in the employee parking lot?

20 A Not to my knowledge.

21 Q Is there anything that would refresh your
22 recollection as to whether or not Ms. Skates
23 had a key card?

24 MS. PANICO: Objection to form.

25 A Key cards -- the only way key cards were

1 V. Dinielli - 1/4/17

2 obtained was through a request through a
3 company that made the key cards and request
4 would come to me and go to Human Resources.
5 That company -- that -- is not even in business
6 anymore. We can't even get new key cards.
7 Only key cards accessible are key cards that
8 were existing.

9 If somebody gave her a key card, I'm not
10 aware of that. I never gave her a key card.

11 Q Did there ever come a time that you --
12 withdrawn.

13 Did you ever write Ms. Skates up?

14 A Yes.

15 Q And what was that for?

16 A That was when I believe she came and asked
17 for a key card. She got angry in my office. I
18 called her back. She was pointing her finger
19 at me and waving at me and she left the office
20 angry.

21 Q What did she ask you for?

22 A A key card.

23 Q What was your response?

24 A I cannot -- I'm not giving you a key card.
25 I cannot give you a key card. I'm not giving

1 V. Dinielli - 1/4/17

2 you a key card.

3 Q Did you give her any instruction during
4 that conversation?

5 A I don't understand.

6 Q You testified she walked away and you
7 called her back.

8 A I called her back, yes.

9 Q Why did you call her back?

10 A Because she was angry and I wanted to
11 discuss it.

12 Q When she walked away, was the conversation
13 over?

14 A She was waving her hand at me and I didn't
15 feel like I deserved to be treated like that.

16 Q So when you called her back what -- she
17 had already left and her hands had already been
18 waved?

19 A She turned her back to me and she was
20 walking away from me out of the door into the
21 main office.

22 Q Did you ask her to do anything?

23 A I said please come back here.

24 Q What did you write her up for?

25 A Insubordination.

1 V. Dinielli - 1/4/17

2 Q It's your testimony here today that
3 Ms. Skates walking away when she was upset --
4 walking away when he was upset that that's
5 insubordination?

6 A And waving her hand at me.

7 Q So your testimony here today is that
8 someone --

9 A Raising her voice at me. Waving her hand
10 at me. Walking away.

11 Q You testified previously that she raised
12 her voice. You just said that she waved her
13 hand.

14 MS. PANICO: Objection to form.
15 Mischaracterization of her prior testimony.

16 Q So your testimony here today that
17 Ms. Skates by walking away from you and waving
18 her hand while she walks away --

19 A And raising your voice.

20 Q Was she walking away with her back to the
21 door like this (indicating)?

22 A She was like that and then she turned
23 around. She had both hands in the air and she
24 was walking out of the door.

25 Q I find it quite odd that your description

1 V. Dinielli - 1/4/17

2 of the events have evolved.

3 MS. PANICO: Objection to the
4 mischaracterization of my client's testimony.

5 The record will reflect what she testified
6 to. We don't need you to characterize it.

7 BY MR. HENRY:

8 Q Well, how can one walk away and wave their
9 finger at you at the same time?

10 A She did. That's the way I recall.

11 Q You consider that insubordination?

12 A Yes.

13 Q Is there anything in the policy that you
14 can point to that says when an employee walks
15 away, waves their finger and raises their voice
16 that that's considered insubordination?

17 A It's disrespect. Disrespect is
18 insubordination.

19 Q You would agree that in some cultures
20 people wave as a from of a term of endearment,
21 right?

22 MS. PANICO: Objection.

23 Q Isn't that right?

24 A I would know the difference.

25 Q Because you know all cultural terms of

1 V. Dinielli - 1/4/17

2 endearment. Is that your testimony here today?

3 A Because I heard the tone of her voice. I
4 heard the context that she was speaking. And I
5 could see her body language.

6 Q So you're a certified body language
7 reader?

8 A No.

9 Q You know the difference between cultural
10 terms of endearment, right?

11 A I'm not saying I do, no.

12 Q So you rely on your own opinion as to what
13 you believe is disrespect or not, right?

14 A Yes.

15 Q As you testified earlier, sometimes your
16 opinion could be influenced, right?

17 MS. PANICO: Objection to form.

18 Again, please refrain from
19 mischaracterizing Ms. Dinielli's testimony.

20 Q In fact, you wrote Ms. Skates up for
21 insubordination because you were upset that the
22 way she handled your denial of her key pass,
23 right? You felt disrespected; isn't that
24 right?

25 A I wrote her up because of the way she

1 V. Dinielli - 1/4/17

2 reacted to what I was telling her.

3 Q Well, if she gave you a hug, would you
4 have written her up?

5 A No.

6 Q But because she expressed --

7 A -- anger.

8 Q -- frustration with your denial of the key
9 card, you found that to be disrespectful,
10 right?

11 MS. PANICO: Objection to form.

12 A Yes.

13 Q Had she blown you a kiss, would you have
14 written her up?

15 A She wouldn't have been angry and it
16 wouldn't be considered insubordination.

17 Q As a result of that writeup, what
18 consequence did Ms. Skates receive?

19 A I sent the writeup to Human Resources and
20 Human Resources determined that she would go to
21 EAP. I don't recall what that stands for, an
22 anger management program.

23 Q So how did it make you feel now knowing
24 that a directive you gave Ms. Skates was later
25 acknowledged and reversed and Ms. Skates

1 V. Dinielli - 1/4/17

2 expressed frustration with you in response to
3 her request for a key card? How did that make
4 you feel about Ms. Skates?

5 A I didn't connect it.

6 MS. PANICO: Objection to form.

7 Q You may answer.

8 A I didn't connect it to -- they were not
9 related.

10 MS. PANICO: Just give me a second after
11 you answer because I don't want to speak over
12 him while he is asking the question.

13 BY MR. HENRY:

14 Q What month was that writeup, if you
15 recall?

16 A Possibly May.

17 Q Does April 17, 2013 sound right?

18 A Possibly, yes.

19 Q So did there ever come a time --
20 withdrawn.

21 So the EAP program counseling that you
22 described, do you know when that ended?

23 A No, I don't recall.

24 Q How long does that usually last?

25 A It was a number of days. I'm not sure how

1 V. Dinielli - 1/4/17

2 many days.

3 Q Does April 19, 2013 through May 10, 2013
4 sound about right?

5 A It wasn't every day. It was probably once
6 a week. Yes. That might be right.

7 Q Were you aware that Ms. Skates was in that
8 EAP program?

9 A Yes.

10 Q How did that make you feel?

11 A Not good because I lost an employee.

12 Q So is there any reason why while
13 Ms. Skates was at EAP that you changed her job
14 duties to cleaning the exercise room?

15 A It has nothing to do with the EAP.

16 Q Did it have to do with the disrespect?

17 A No. It had nothing to do with that.

18 Q Why would you stick her in the exercise
19 room when you had never stuck anyone else in
20 the exercise room?

21 MS. PANICO: Objection to form.

22 Q Why did she deserve the exercise room and
23 no one else did?

24 A The exercise room was actually -- can I
25 tell you -- can I say the story of how that

1 V. Dinielli - 1/4/17

2 came about?

3 Q No. I just want to know why was

4 Ms. Skates singled out for the exercise room.

5 A For protection for herself.

6 Q So your testimony here today is that

7 she -- Ms. Skates was singled out and put in

8 this exercise room for protection for herself?

9 MS. PANICO: Objection to form.

10 Q Is it for herself or from herself?

11 A For herself.

12 Q Protection from who?

13 A The seniors in the senior lounge.

14 Q Who were the seniors, John and --

15 A The senior patrons.

16 Q Your testimony here today is that you

17 stuck Ms. Skates in the exercise room, a less

18 desirable position, for protection for herself

19 from the senior patrons?

20 MS. PANICO: Objection to form.

21 Please don't mischaracterize. She never

22 testified that it was a less desirable

23 position.

24 A It was not less desirable and there were

25 other people that cleaned the senior room.

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2 Obviously -- I mean, that cleaned the fitness
3 center because it's a very well-kept area.

4 Q But Ms. Skates was the only one that was
5 assigned to that particular duty?

6 A No.

7 Q You just testified a few moments ago that
8 you did it for protection from herself. So
9 which one is it?

10 A She was not the only one that cleaned the
11 fitness center.

12 Q Not cleaned but assigned exclusively to
13 the fitness center.

14 A Only one out of who?

15 Q The others that you listed.

16 Was there anyone else that was in there on
17 a full-time basis?

18 A She wasn't there on a full-time basis.

19 Q The record reflects exactly what you said
20 so we'll move forward.

21 How about Naomi? How about Gwen?

22 A Who?

23 Q Naomi and Gwen.

24 A Who is Gwen?

25 Q Are you familiar with the name Naomi?

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2 A Yes.

3 Q How about Naomi?

4 MS. PANICO: How about Naomi what?

5 MR. HENRY: Let the record reflect again
6 counsel's continuous objection. I'm in the
7 middle of asking my question.

8 MS. PANICO: That was a complete question.
9 You said: "How about Naomi?"

10 MR. HENRY: It was not.

11 MS. PANICO: I will just object to form.

12 MR. HENRY: Counsel is exceptionally
13 trigger happy with these objections.

14 BY MR. HENRY:

15 Q Naomi, who was that?

16 A Naomi is another employee at the Village.

17 Q Was Naomi relegated to the rec room? I'm
18 sorry. Was she relegated to the exercise room
19 as in the same manner Ms. Skates was?

20 MS. PANICO: Objection to form.

21 Q You may answer.

22 A Naomi spends her whole day cleaning the
23 locker room.

24 Q My question was: Was she stuck in the
25 exercise room like Ms. Skates for her

1 V. Dinielli - 1/4/17

2 protection?

3 MS. PANICO: Objection to form.

4 A I think -- no.

5 Q So Ms. Skates was the only one that was
6 stuck in the exercise room for her protection,
7 right?

8 MS. PANICO: Objection to form.

9 Q Right?

10 A From a situation, yes.

11 Q And when you stuck her in the --

12 A I didn't stick her anywhere.

13 Q When you --

14 A -- relocated her.

15 Q -- relocated her to the exercise room, you
16 did so while she was still at EAP receiving EAP
17 counseling, right?

18 A I don't recall.

19 MR. HENRY: Can we take a break?

20 (Whereupon, a short recess was taken.)

21 MR. HENRY: Back on the record.

22 BY MR. HENRY:

23 Q Did there ever come a time that Ms. Skates
24 complained to you about your decision to stick
25 her in the exercise room?

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2 MS. PANICO: Objection to form.

3 Q Or her reassignment.

4 Did there come a time that Ms. Skates
5 complained to you about her reassignment?

6 A No.

7 Q So your testimony here today that
8 Ms. Skates did not complain to you about her
9 reassignment?

10 A No.

11 Q So your testimony here today is that you
12 never had a discussion with Ms. Skates about
13 her dissatisfaction with being reassigned to
14 the exercise room?

15 MS. PANICO: Objection. Asked and
16 answered.

17 A No.

18 Q Did there ever come a time that Ms. Skates
19 during that period that the reassignment that
20 she requested that she leave work to seek
21 medical attention because she had chest pains?

22 A Yes.

23 Q Why did she have chest pains?

24 A I don't remember.

25 Q Could it possibly be because you raised

1 V. Dinielli - 1/4/17

2 your voice, screamed at her in a hostile
3 manner?

4 A No.

5 Q Did she ask you to leave work?

6 A Did she ask me to leave?

7 Q Did she make the request to you directly
8 that she leave work to seek medical attention
9 for her chest pains?

10 A Yes. She was leaving. She was leaving.

11 Q When you say she was leaving, what do you
12 mean?

13 A She didn't ask me. Another employee came
14 into my office and said Mrs. Earline Skates is
15 having chest pains, she's leaving. With that,
16 I walked out in the lobby and saw her heading
17 towards the door.

18 Q Why was she leaving?

19 A Because she had chest pains.

20 Q Did anyone or any other employee ever come
21 to your office and say that Ms. Skates is upset
22 because she is in -- she was reassigned to the
23 exercise room?

24 A No.

25 Q Was there ever any connection between the

1 V. Dinielli - 1/4/17

2 chest pains and her leaving work to seek
3 medical attention to the fact that she was
4 reassigned to the rec room?

5 A At that time I was not aware of any
6 connection.

7 Q But later on you became aware?

8 A Just through statements that I'm hearing.

9 Q Did there ever come a time thereafter that
10 you learned that Ms. Skates was instructed by
11 her doctor not to return to work for one week?

12 A No.

13 Q Earlier I asked you a question pertaining
14 to whether or not there was ever a request made
15 or whether you learned of a request where
16 Ms. Skates requested sick leave or to leave or
17 had some form of disability. You testified no.

18 A Yes.

19 Q Well, you just testified a few moments ago
20 that you learned that Ms. Skates requested
21 medical attention, to leave work for medical
22 attention because she was experiencing chest
23 pains and that you actually met her in the
24 lobby, right?

25 A She didn't request. She was leaving

1 V. Dinielli - 1/4/17

2 because she was having chest pains which was
3 understood.

4 Q Leaving for medical attention, right?

5 A She was leaving to go home because she
6 was -- she had -- she was having chest pains.

7 Q How would you know if she was leaving to
8 go home if you didn't know what she was leaving
9 for?

10 A I know. She was leaving because she
11 had -- she wasn't feeling well and she was
12 having chest pain.

13 Q It's your testimony here today that
14 leaving because of chest pains or not feeling
15 well is not the same as leaving to seek medical
16 attention?

17 A I don't know why she was -- she was
18 leaving to go home. She wasn't feeling well.

19 Q Well, when you testified --

20 A It wasn't a request. She was leaving
21 which was understood.

22 Q When you testified earlier that you never
23 had any occasion to know of Ms. Skates leaving
24 due to a disability or being sick or because of
25 a medical condition, that was inaccurate

1 V. Dinielli - 1/4/17

2 testimony, right?

3 MS. PANICO: Objection to form.

4 A No. Because I didn't know it was a
5 condition. I didn't know she was seeking
6 medical attention. She was leaving to go home.

7 Q Well, you just testified a few moments ago
8 that you learned that Ms. Skates' treating
9 doctor told her not to return to work for a
10 week, right?

11 A What?

12 Q You just testified a few moments ago that
13 you later learned that Ms. Skates' treating
14 doctor told her not to return to work for a
15 week.

16 A I said -- no, I didn't say --

17 MS. PANICO: Object to form.

18 A I said I was not aware. I was not
19 advised.

20 Q Did there ever come a time that you
21 changed Ms. Skates' work schedule to include
22 Sundays?

23 A Yes.

24 Q Did that change occur on or around May 22,
25 2013?

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2 A Yes.

3 Q So after Ms. Skates disrespected you and
4 you wrote her up for insubordination on
5 April 17, 2013 while she was in EAP program
6 from April 19th through May 10th, you stuck her
7 in the exercise room and then put her on
8 Sundays --

9 MS. PANICO: Objection to form.

10 Q -- put her on Sundays when she never
11 worked Sundays before?

12 A I didn't stick her anywhere.

13 Q You reassigned her?

14 A I reassigned her which people were
15 reassigned quite often as need be. And I, as
16 far as Sundays, everybody -- every employee in
17 the recreation center, aside from myself and
18 one other employee, works a day on the
19 weekends, Sunday through Thursday or Tuesday
20 through Sunday.

21 Q Is every employee also reassigned to the
22 rec room for their -- to the exercise room --

23 A As needed, yes.

24 Q -- for their own protection? Does that
25 happen to every employee?

1 V. Dinielli - 1/4/17

2 A If an employee was being harassed in a
3 certain area, I would reassign them so that
4 they would not go -- they would not be
5 subjected to treatment like that, yes.

6 Q But Ms. Skates was the only one that you
7 reassigned to the exercise room for her
8 protection during that period, right?

9 A It was only her and another individual.

10 Q Well, she was the only one, right?

11 A Yes. Because the other individual had
12 been in that room for a number of years.

13 Q She was the only one that you changed her
14 schedule to include Sundays?

15 A No.

16 MS. PANICO: Objection to form.

17 A No. Everybody. Everybody worked a
18 weekend. We are recreation. We are nights and
19 weekends.

20 Q Well, didn't you know prior to making that
21 change Ms. Skates couldn't work on Sunday due
22 to religious commitment?

23 A No.

24 Q So it's your testimony here today that you
25 were not aware that Ms. Skates could not work

1 V. Dinielli - 1/4/17

2 on Sundays due to her religious convictions?

3 A Yes.

4 Q Well, why is it that you told her that
5 this is the schedule and I'm not going to
6 change it? Why did you say that to her then?

7 A Because after the schedule was changed,
8 she said, I go to church on Sundays. So I
9 said, well, other people go to church on
10 Saturdays. Maybe you could switch your -- if
11 your church is -- has services on Saturdays.
12 We are a recreation and we're open seven days a
13 week.

14 Q Well, I just asked you whether or not you
15 knew that Ms. Skates said that she couldn't
16 work on Sundays due to her religious
17 convictions. You said no.

18 A Before I made the ruling, before I sent
19 her the assignment.

20 Q But there came a point in time that you
21 learned that she couldn't work on Sundays due
22 to her religion.

23 A That was afterwards.

24 Q And then in response you said, I'm not
25 going to change it. In fact, you elaborated

1 V. Dinielli - 1/4/17

2 and said that she needed to tell her pastor to
3 change service to Saturday.

4 A I didn't tell her to tell her pastor to
5 change service to Saturday.

6 Q Well, you told her to go to a Saturday
7 service.

8 A I just said maybe your church offers
9 services on Saturdays. It was a suggestion.

10 Q You suggested that her pastor come in on
11 Saturday for her because you put her on a day
12 to work less than 20 days after she
13 disrespected you?

14 MS. PANICO: Object to form.

15 A My church has -- I didn't ask anything
16 extra. My church has services on Saturday.

17 Q You usually do that to people who
18 disrespect, Ms. Dinielli, you change their
19 schedule and stick them in the exercise room?

20 A That was her schedule to be. She was
21 trained on Monday through Friday and she had to
22 adhere to the same schedule that everybody else
23 was working.

24 Q Did you ever receive a policy from
25 Freeport with respect to retaliation? Do you

1 V. Dinielli - 1/4/17

2 know what retaliation means, Ms. Dinielli?

3 A Yes, I do know what it means.

4 Q What does it mean?

5 A Means getting back at somebody, getting
6 even.

7 Q You felt disrespected when Ms. Skates
8 complained that she didn't have a key card,
9 right?

10 A At that moment, she was disrespecting me
11 and I wrote her up and it was over.

12 Q Was it really over when you stuck her in
13 the exercise room while she was getting --

14 A Yes it was.

15 Q -- while she was still in EAP counseling?

16 MS. PANICO: Object to form.

17 A Yes.

18 Q Was it really over when you told her that
19 she needed to go to her pastor and have him --
20 suggest that he change his program from Sunday
21 to Saturday?

22 MS. PANICO: Objection to form.

23 Q Was it really over then?

24 A It was just a suggestion that maybe she'd
25 look into it. I didn't tell her to go to her

1 V. Dinielli - 1/4/17

2 pastor.

3 Q Well, you concede and appreciate why we
4 believe that that's retaliation, right?

5 MS. PANICO: Object to form.

6 A No. To work the same schedule as every
7 other employee in that building, no.

8 Q Do you tell every other employee or
9 suggest to their pastor that they change their
10 service from the day that the service is?

11 MS. PANICO: Objection to form.

12 Q You may answer.

13 A I've had other employees that have also
14 stated religious preferences, yes.

15 Q Did there ever come a time that you
16 learned thereafter -- well, withdrawn.

17 So after you suggested that she tell her
18 pastor --

19 A I didn't suggest she tell her pastor
20 anything.

21 Q Suggest a new service, right?

22 A I suggest she seek. I didn't suggest she
23 told anybody anything.

24 Q When you later learned that her request
25 for a religious accommodation to be off on

1 V. Dinielli - 1/4/17

2 Sundays, did you go back and adjust the
3 schedule so she was off on Sunday?

4 A Yes, I did.

5 Q So you made a decision to strip her of a
6 day that she was entitled to without having the
7 full information or knowledge as to what you
8 could have or couldn't do.

9 MS. PANICO: Objection to form.

10 Q Right?

11 A I don't understand what you mean.

12 Q Well, why would you give her a day that
13 you took away if you knew that you couldn't
14 take it away to begin with?

15 MS. PANICO: Objection to form.

16 A I don't understand what you're saying.

17 Q Why would you give Ms. Skates her Sundays
18 back if you knew that you didn't have the right
19 to take it away to begin with?

20 MS. PANICO: Objection to form.

21 A I had the right to take it away. I gave
22 it back to her because she agreed -- my
23 lightest days are Fridays and Mondays because
24 of the Saturday/Sunday schedule. She agreed to
25 keep the Monday and split her days off. So we

1 V. Dinielli - 1/4/17

2 sort of made an agreement. It was a
3 negotiation on both of our parts.

4 Q Do you usually negotiate with people who
5 disrespect you?

6 A I negotiate with my employees, yes.

7 Q Do your employees disrespect you?

8 A On a whole, no.

9 Q Do you usually negotiate with employees
10 that disrespect you?

11 A I negotiate with anybody if it's something
12 that can be talked about, yes.

13 Q How is it negotiation when you took the
14 day away?

15 MS. PANICO: Objection to form.

16 A Because I assign schedules to all my
17 employees.

18 Q So generally employees are given two
19 consecutive days off, right?

20 A Yes.

21 Q Is that a long-standing practice and
22 policy?

23 A We like to do that.

24 Q So is there any reason why after
25 Ms. Skates complained about her schedule that

1 V. Dinielli - 1/4/17

2 she was the only employee during that time that
3 wasn't given two consecutive days off?

4 A She agreed to it.

5 Q Do you have that agreement in writing?

6 A She did it.

7 Q I'm asking you. Do you have it in
8 writing? Is that part of the notes you
9 reviewed before you came here today?

10 A No. I don't recall seeing it. I'm not
11 really quite sure.

12 Q Why would she agree to something and then
13 later complain about it?

14 A I don't know. You would have to ask her.

15 Q Is it possible that she didn't agree to
16 it?

17 A Well, she didn't come -- she worked the
18 day -- she worked on the Monday and she didn't
19 work on the Sunday. So I would assume she
20 agreed.

21 Q Did there ever come a time that you
22 learned that Ms. Skates required
23 hospitalization in or about June of 2013
24 through July 2nd of 2013?

25 A I did learn that at some point, yes.

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2 Q And what was the reason why you learned
3 that Ms. Skates required hospitalization?

4 MS. PANICO: Objection to form.

5 A She -- when she called -- when she -- I
6 had sent her -- when she hadn't come to work, I
7 sent her a letter and she replied. She called
8 me up and told me that he had been in the
9 hospital.

10 Q Do you know why she was in the hospital?

11 A No.

12 Q Does stress-induced stomach pains sound
13 about right?

14 A I was not informed what her ailment was.

15 Q How about back pains; does that sound
16 right?

17 A No.

18 Q How about possible suicidal ideation; does
19 that sound right?

20 A No. I was not privy to her medical
21 history.

22 Q Well, you testified earlier that you were
23 privy that she needed to go home early because
24 she had chest pains, right?

25 A She told me.

1 V. Dinielli - 1/4/17

2 Q Is that not a medical history?

3 A Well, she told me.

4 Q Did you send her a letter in June 5th of
5 2013 telling her that she needed to give you
6 medical documents?

7 A Yes.

8 Q Did she ever respond to that letter?

9 A She sent me a doctor's note stating that
10 when she could return to work.

11 Q You just testified a few moments ago that
12 you didn't have any documentation pertaining to
13 her medical history.

14 A It doesn't say on it what her problem was.

15 Q Would you consider a letter from a doctor
16 medical documentation?

17 A I said I was aware that she had seen a
18 doctor and was hospitalized. Said I did not
19 know why she was hospitalized.

20 Q Do you usually testify with incomplete and
21 inaccurate responses?

22 MS. PANICO: Objection to form.

23 Q Do you usually give inaccurate testimony
24 while under oath?

25 A I try my best.

1 V. Dinielli - 1/4/17

2 Q Do you correct instances where you give
3 inaccurate testimony while under oath?

4 MS. PANICO: Object to form.

5 A I have not been under oath in quite awhile
6 so...

7 Q What was the contents of that letter?

8 A I believe -- I'm just -- she had not come
9 to -- she had called in sick. She had not come
10 back to work and the letter stated that she
11 needed to -- the doctor's note that she had
12 sent us said that she was going to return on a
13 certain date. She did not return to work on
14 that date.

15 About a week, give or take, had passed and
16 I said if you do not return to work on I think
17 it was July 8th, we will assume that you're --
18 that you're abandoning your job.

19 Q Earlier I asked you whether or not
20 Ms. Skates had made a request for sick leave.
21 You testified no.

22 A Yes.

23 Q But you just testified a few moments ago
24 that she called in sick and made a request for
25 sick leave.

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2 A No. She called in sick day by day.

3 Q When I asked you earlier if she made a
4 request for sick leave, you told me no.

5 A Well, leave to me -- I understand leave to
6 be --

7 Q Or she called in sick. You said no.

8 A I understand leave to be more than a day.
9 Leave to be -- like when you say leave, that's
10 what I'm -- that's what I am --

11 Q But when I asked you earlier --

12 A I understand it to be.

13 Q When I asked you earlier whether or not
14 Ms. Skates had called in sick you said no.

15 MS. PANICO: Objection to form.

16 A I never said no.

17 MS. PANICO: That's a mischaracterization
18 of testimony again.

19 Q When I asked you earlier whether or not
20 Ms. Skates -- were you aware of any
21 disabilities she may have had, you said no.

22 MS. PANICO: Again, objection to form.

23 A I'm not aware of any disabilities.

24 Q When I asked you earlier whether or not
25 Ms. Skates had any medical conditions, you said

1 V. Dinielli - 1/4/17

2 no.

3 MS. PANICO: Objection to form.

4 A I'm not aware of any medical condition.

5 Q And when I asked you if she requested sick
6 time, you said no.

7 MS. PANICO: Objection to form.

8 A A span of sick time. She never asked to
9 be off for a length of time.

10 Q So it's your testimony here today that the
11 testimony you gave earlier was inaccurate?

12 MS. PANICO: Again, objection to form.

13 Please stop mischaracterizing her
14 testimony.

15 A No.

16 Q You just testified a few moments ago that
17 you learned directly that Ms. Skates made a
18 request for sick -- to call in sick on a
19 certain day.

20 A She called in days and she said she wasn't
21 coming to work. Some days she said her
22 daughter was ill. Some days she said she had a
23 personal problem. She never called -- I never
24 knew -- first of all, she never called in to
25 me. So I never spoke to her until that one --

1 V. Dinielli - 1/4/17

2 until after I sent her the letter.

3 Q So when she called in sick and you
4 testified earlier that she never called in
5 sick, that was inaccurate, right?

6 MS. PANICO: Objection to form.

7 Mr. Henry, we have a stenographer here for
8 a reason.

9 MR. HENRY: Your objection is noted.

10 (Counsel speaking simultaneously.)

11 MS. PANICO: We have a stenographer here
12 for reason. She's recording the record --

13 MR. HENRY: Again, your objection is
14 noted.

15 MS. PANICO: Please allow me to make a
16 record.

17 MR. HENRY: No. Because speaking
18 objections is not needed.

19 May I please move forward?

20 MS. PANICO: No. I'm allowed to make a
21 record.

22 MR. HENRY: I accommodated you by allowing
23 this deposition to happen after 1 o'clock.
24 And, please, your objection is noted. But if
25 you want to have a speaking objection, we can

1 V. Dinielli - 1/4/17

2 leave a part in the transcript at the end so
3 you can note it.

4 MS. PANICO: You're taking longer to go
5 through this right now than it would for me to
6 make my objection.

7 My objection is that there is a record --
8 (Counsel speaking simultaneously.)

9 MR. HENRY: Your objection is noted.

10 MS. PANICO: There is a record of
11 Ms. Dinielli's --

12 MR. HENRY: Your objection is noted. You
13 cannot tell me --

14 MS. PANICO: Mr. Henry, please allow me to
15 make my objection.

16 MR. HENRY: I'm going to call the Court at
17 this time.

18 MS. PANICO: To allow me to make --

19 MR. HENRY: I'm calling the Court because
20 this counsel is engaging in what I believe to
21 be obstruction misconduct. We have a number of
22 objections that have been made, but in the
23 spirit of moving this along, I haven't taken
24 much issue with it.

25 Now I'm asking this witness pointed

1 V. Dinielli - 1/4/17

2 questions that tests her credibility and
3 knowledge. I note Counsel's objection. And at
4 the end of the day, if Counsel does not allow
5 me to move forward, I'm going to call the Court
6 because I believe this is completely harassing
7 and oppressive.

8 So can I ask my next question or am I
9 going to have to call the Court.

10 MS. PANICO: No. I'm making a record.

11 MR. HENRY: Your objection is noted.

12 Please --

13 MS. PANICO: No. It's going to take
14 longer for you to call the Court than it will
15 for me to just make the objection.

16 (Counsel speaking simultaneously.)

17 MR. HENRY: Let the record reflect I'm
18 calling the Court.

19 MS. PANICO: Okay. Call the Court again.

20 MR. HENRY: I'm not going to deal with
21 speaking objections. The Court just admonished
22 you on it, that you're able to give your
23 objection and move on. But you want to give a
24 speaking dialogue.

25 (Whereupon, a short recess was taken.)

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2 MR. HENRY: Back on the record.

3 Can we agree that the Court said to move
4 on -- it's objection to form and move on.

5 MS. PANICO: No, we can't agree.

6 Let's just move on with the deposition,
7 Mr. Henry.

8 MR. HENRY: All right. One second.

9 Could I have a readback of my last
10 question, please, before the Court was called.

11 (Whereupon, the requested record was read
12 back by the Court Reporter.)

13 MS. PANICO: Objection to form.

14 Q You may answer.

15 A I never said she never called in. There
16 were times she called in for a day. She never
17 called in for a leave. She never requested a
18 leave. And there were times she didn't call
19 in.

20 Q So did there come a time that you learned
21 that Ms. Skates would be required to stay in
22 the hospital and not return to work until
23 July 8, 2013?

24 A No. There was a different date.

25 July 8th was the day she was supposed to return

1 V. Dinielli - 1/4/17

2 to work.

3 Q What date was it that you learned she
4 would be staying in the hospital?

5 A I believe the doctor said June 16th.

6 Q Did there ever come a time that you
7 informed Ms. Skates that she would be suspended
8 for two days without pay for failing to call in
9 sick due to hospitalization?

10 A Yes. She was -- yes. She was suspended.
11 I don't know that it was for a hospitalization
12 that she was suspended.

13 Q Well, was she suspended because of the
14 fact that she was out sick?

15 A She was suspended because she hadn't
16 called in some of the days, all of days.

17 Q Well, did any part of those days have to
18 do with receiving medical treatment or being
19 hospitalized?

20 A I don't know.

21 Q Well, you just testified a few moments ago
22 that you learned and received medical documents
23 from her doctor pertaining to the period in
24 time that she was out of work.

25 A That was after the fact.

1 V. Dinielli - 1/4/17

2 Q So the suspension for two days -- it's
3 your testimony that that suspension happened
4 before?

5 A I don't recall. I would have to look at
6 the timeline of what the dates were. I don't
7 remember.

8 Q Did there ever come a time that you
9 learned that Ms. Skates filed a complaint
10 against you or against Freeport on a basis of
11 her race, religion and disability and
12 retaliation?

13 MS. PANICO: Objection to form.

14 Q You may answer.

15 MS. PANICO: Asked and answered.

16 A During her employment, no. After her
17 employment, yes.

18 Q So at the time that you suspended
19 Ms. Skates, did you learn shortly thereafter
20 that you were named in a complaint by her?

21 MS. PANICO: Object to form.

22 A After her termination, I was advised. Not
23 during her employment.

24 Q How did you receive that notice?

25 A I don't recall.

1 V. Dinielli - 1/4/17

2 Q Did there also come a point in time that
3 you learned that -- you later learned that
4 Ms. Skates complained about you in that
5 complaint to the -- that administrative filing
6 with the EEOC New York State Division of Human
7 Rights?

8 MS. PANICO: Objection. Asked and
9 answered.

10 A If I was given a copy of it, I'm sure I
11 read it.

12 Q Did there ever come a time that you later
13 learned that Ms. Skates suffered a work-related
14 injury on her right wrist?

15 A I learned it the day -- the day she was --
16 she went -- after she went to the emergency
17 room, she called me and she told me that she
18 had hurt her wrist.

19 Q Do you recall what date that was?

20 A October 22nd possibly.

21 Q And what did you understand about that
22 injury that she suffered?

23 A I don't understand anything. I mean she
24 told me she hurt her wrist and she was in the
25 emergency room.

1 V. Dinielli - 1/4/17

2 Q When you say she told you, how did she
3 tell you that?

4 A She called up.

5 Q Did she submit to you any requests in
6 writing or any notice in writing?

7 A No.

8 Q And how did you -- what was your
9 understanding of that work-related injury to
10 her right wrist?

11 A After she left the emergency room, she
12 came to the recreation center to fill out an
13 incident report and she told me that she had
14 hurt her wrist the prior day when she was
15 cleaning the parking lot, picking up garbage.

16 Q Did you look at the FMLA -- I'm sorry.
17 Did you look at the -- withdrawn.

18 Do you have any knowledge or experience
19 with Village of Freeport's work-related injury
20 policies?

21 A No. That's why I called Human Resources.

22 Q Who in Human Resources did you call?

23 A I called Conor Kiran who quickly came over
24 to see Ms. Skates.

25 Q Was this the same Conor Kiran that gave

1 V. Dinielli - 1/4/17

2 you the directive to threaten Ms. Skates with
3 something that you didn't agree with as it
4 pertained to her attendance record? Was that
5 the same Conor Kiran or a different one?

6 A Conor is the director -- Mr. Kiran is the
7 director of Human Resources. We only have one
8 director of Human Resources. He did not tell
9 me to threaten her.

10 Q Well, he told you to give her a directive
11 you didn't agree with.

12 A He told me to give her a directive --

13 Q That you disagreed with, right?

14 A I did disagree with it, but I'm not Human
15 Resources.

16 Q Was that the same Conor that you called
17 when Ms. Skates said --

18 A Yes.

19 Q Well, do you think that he would have been
20 fair in evaluating that October 22nd or so 2013
21 medical leave request from Ms. Skates? Do you
22 think he would have been fair?

23 MS. PANICO: Objection to form.

24 A That's his job.

25 Q Was it his job also to give directives

1 V. Dinielli - 1/4/17

2 that you disagreed with?

3 A Yes.

4 Q Did there ever come a time that you
5 learned that Ms. Skates was advised that she
6 needed to be out of work for several months in
7 order for the damaged ligaments to heal?

8 A No.

9 Q So it's your testimony here today that you
10 never learned that Ms. Skates needed to be out
11 of work for months due to damaged ligaments?

12 A No.

13 MS. PANICO: Objection. Asked and
14 answered.

15 Q Is that no that that's not your testimony
16 or is that -- is your testimony that you
17 weren't aware that she needed months?

18 A I was not aware.

19 Q Did there ever come a time that you
20 learned that Ms. Skates applied for workers'
21 compensation?

22 A No.

23 Q Did there ever come a time that Ms. Skates
24 provided you with a doctor's note as it
25 pertained to that October 22, 2013?

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2 A No. Because she was terminated on that
3 day. So I had no -- I had no conversation with
4 her after that day.

5 Q Well, how would you know that she was
6 terminated?

7 A How do I know? Because when Conor Kiran
8 came over, he came over with legal counsel the
9 day that she came in with her arm and they
10 terminated her.

11 Q They terminated Ms. Skates on the day that
12 she had a work-related injury.

13 Is that your testimony?

14 A The day she claimed she had a work-related
15 injury.

16 Q So the day that Ms. Skates had a
17 work-related injury, she was terminated, right?

18 A Yes. They were not aware of the
19 work-related injury prior to making plans to
20 terminate her.

21 Q But you were aware that she --

22 A I was aware that morning.

23 Q So the decision --

24 A It was a decision to terminate her the
25 prior day when we had no idea she had a

1 V. Dinielli - 1/4/17

2 work-related injury. The next morning she
3 called out. So I said we cannot terminate her
4 today. She called and said she was coming to
5 fill out a report. I called over to Human
6 Resources. They came over and they terminated
7 her.

8 Q So you stood up for Ms. Skates and said we
9 can't terminate her on that day, right?

10 A No.

11 Q Well, didn't you just testify that you
12 said that they couldn't terminate her on that
13 day?

14 A They couldn't terminate her because she
15 wasn't coming to work. She was not here to
16 terminate her.

17 Q So the decision to terminate her, was that
18 a decision that came from you?

19 A It was a collective decision to terminate
20 her.

21 Q Was that collective decision -- were you
22 at the helm of that collective decision?

23 A I wouldn't say I was at the helm, no. I
24 don't have that authority.

25 Q Was that another decision or another

1 V. Dinielli - 1/4/17

2 directive that you just received orders?

3 A No. I agreed with it.

4 Q So you agreed that Ms. Skates should be
5 terminated on the day that she learned that --
6 the day that you learned of a work-related
7 injury?

8 MS. PANICO: Objection to form.

9 A I wasn't aware of the work-related injury
10 when the decision was made to terminate her.
11 When she left work on the day of the injury,
12 she told nobody. In fact, I saw her leave and
13 she didn't tell me she hurt herself during the
14 day.

15 Q Are you familiar with the Village of
16 Freeport's work-related injury policy and as it
17 relates to protection afforded to people who
18 suffer injuries?

19 A No.

20 Q Did you care to look at it?

21 A Whenever I have a question or something
22 I'm not aware of that comes up, I call Human
23 Resources for them to educate me and inform me.

24 Q But in this instance you didn't call Human
25 Resources, did you?

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2 A Yes, I did.

3 Q Did you call Human Resources before or
4 after you agreed with the decision to
5 terminate?

6 A I called -- I called Human Resources on
7 the morning of the 22nd stating Ms. Skates was
8 not coming to work so we could not terminate
9 her. She then came in. I did not know she was
10 coming in. She then came in with her arm in a
11 sling. At that point, I didn't even know it
12 was a work-related injury.

13 I called Human Resources. I said,
14 Ms. Skates' arm is in a sling. She was in
15 Nassau Hospital. They said try to keep her
16 there. We're coming over. They came over and
17 she was terminated.

18 Q Did you find -- did you think that that
19 was fair to terminate someone who had a
20 work-related injury that you stuck in an
21 exercise room and that had disrespected you?

22 MS. PANICO: Objection to form.

23 A I didn't stick her anywhere.

24 Q You reassigned her, right?

25 A That's my job to reassign. I reassign all

1 V. Dinielli - 1/4/17

2 my -- I move around all my employees.

3 Q Did you think that that was fair?

4 A Did I think it was fair, I thought it was
5 necessary.

6 Q Why did you think it was necessary?

7 A Because she wasn't -- she was not -- she
8 did not -- her work was not satisfactory. Far
9 from satisfactory.

10 Q Had she been written up at all?

11 A Yes.

12 Q During the period after she disrespected
13 you to the point in time that she was
14 hospitalized, was she written up for
15 performances issues?

16 A She sent -- she was spoken to. She was
17 written up when she went to the EAP.

18 Q That was right after she disrespected you,
19 right?

20 A Yeah.

21 Q Were there any other writeups during that
22 time?

23 A I don't recall.

24 Q So in fact you can't point to one
25 performance-related writeup after she

1 V. Dinielli - 1/4/17

2 disrespected you, right, aside from the EAP,
3 aside from the insubordination where she
4 disrespected you?

5 A She had disrespect. She had --

6 Q That was it, right?

7 A No. She didn't show up for work. She
8 didn't call in for work. She thought her
9 daughter was calling in for work. Then I had a
10 lot of complaints from employees about her,
11 about her behavior and how they couldn't get
12 along with her.

13 Q But you didn't write her up for those,
14 right? From the time that she was written up
15 for disrespecting you to the time in
16 October 2013, you hadn't written her up for any
17 of those other things, right?

18 MS. PANICO: Objection to form.

19 A I don't know if I wrote her up. I kept
20 administration in the loop of everything that
21 was happening.

22 Q Aside from the request that she made for
23 sick leave and aside from the time that she
24 needed off, that she was entitled to, you can't
25 identify any other instance where you wrote her

1 V. Dinielli - 1/4/17

2 up.

3 MS. PANICO: Objection to form.

4 Q Right?

5 MS. PANICO: Aside from what she testified
6 to already?

7 A I don't know to be a fact. I would have
8 to go back at the time. I don't know if she
9 was written up or not.

10 Q But as we're seeing here, we know that she
11 was only written up at least one time from the
12 time she disrespected you and that was the time
13 she disrespected you, right?

14 MS. PANICO: Objection to form.

15 A I sent her a letter that she had to come
16 back work.

17 Q And that was the letter that you sent in
18 or around July of 2013 and that was after or
19 before you found out that she was in the
20 hospital, right?

21 MS. PANICO: Objection to form.

22 A The doctor said she would return to work
23 on June 16th.

24 Q How would you know what the doctor said if
25 you testified earlier you didn't receive any

1 V. Dinielli - 1/4/17

2 medical documentation?

3 A I said that I received it after I asked
4 for it.

5 Q Did there ever come a time that Ms. Skates
6 complained to you or rather have there ever
7 been a time that Ms. Skates had complained or
8 filed a grievance against you?

9 MS. PANICO: Objection. Asked and
10 answered several times.

11 A I don't believe.

12 Q Did there ever come a time --

13 A Not during her employment, yes.

14 Q Did there ever come a time that you denied
15 Ms. Skates' complaint or grievance filed with
16 respect to how you handled her request?

17 MS. PANICO: Objection to form.

18 A Well, when she made a call to the union or
19 when she requested the help of the union, I
20 guess that would be a complaint, but not
21 necessarily about me. Well, I guess maybe
22 about me, my department.

23 Q When you say you guess about you, in fact,
24 it was about you?

25 A It was about the policies or the decisions

1 V. Dinielli - 1/4/17

2 that were made.

3 Q The decisions that were made by you,
4 right?

5 A That were handed down to her by me, yes.

6 Q Were you ever the subject of a grievance
7 filed by Ms. Skates?

8 MS. PANICO: Objection. Asked and
9 answered.

10 A I don't recall.

11 Q Did you ever deny any of Ms. Skates'
12 grievance requests?

13 A I don't recall what the grievances were,
14 so I can't say yes or no.

15 Q Did there ever come a time that Ms. Skates
16 made a grievance to you pertaining to time that
17 she needed to heal that you denied?

18 A No.

19 Q Did there ever come a time that Ms. Skates
20 made a grievance to you for time that she
21 needed to address a medical condition that you
22 denied?

23 A No.

24 Q Did there ever come a time that Ms. Skates
25 made a grievance to you during the period of

1 V. Dinielli - 1/4/17

2 June 2013 that you denied?

3 A No. She used every day she had available
4 to her.

5 Q So your testimony here today is that in
6 June, around June 2013, Ms. Skates didn't make
7 a grievance to you that you denied?

8 MS. PANICO: Objection to form.

9 A I never denied anything that she was --
10 that she was entitled to, no.

11 MR. HENRY: At this time, I would like to
12 mark for identification 1, previously marked as
13 1.

14 MS. PANICO: Do you have a copy for me?

15 MR. HENRY: Sorry. I don't.

16 MS. PANICO: Could you make me a copy?

17 MR. HENRY: Sorry. We don't have that
18 much time.

19 (Whereupon, the aforementioned document,
20 was marked as Plaintiff's Exhibit 1 for
21 identification as of this date by the
22 reporter.)

23 BY MR. HENRY:

24 Q Do you recognize that document in front of
25 you?

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2 MS. PANICO: Give me an opportunity to
3 review it.

4 MR. HENRY: How can you review? You can't
5 review it. This is not the trial.

6 I'm calling the Court.

7 MS. PANICO: Allowed to see --

8 MR. HENRY: No. Let the --

9 MS. PANICO: I'm allowed to see what
10 you're showing my client.

11 (Counsel speaking simultaneously.)

12 MR. HENRY: You can see it right there.

13 MS. PANICO: Then call the Court again.

14 MR. HENRY: I will. I absolutely will.

15 The witness needs to see the document
16 that's there in front her. You're not even
17 allowing her to look it.

18 MS. PANICO: I will allow her once I get
19 to see what you're giving her.

20 MR. HENRY: Let her see it. I don't
21 understand. You're not going to go through
22 this with all my exhibits. I'm not doing this.
23 I'm calling the Court.

24 MS. PANICO: Just give me a copy of
25 whatever you're giving my client.

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2 MR. HENRY: I have one copy. We already
3 had these previously marked.

4 MS. PANICO: Just give me a copy. How can
5 you show my client something when you're not
6 even giving me an opportunity to --

7 MR. HENRY: These are documents that you
8 produced.

9 (Whereupon, an off-the-record discussion
10 was held.)

11 MR. HENRY: On the record.

12 Counsel had this one-page document that
13 has maybe five lines, total word count of 40 in
14 her hand now for at least two minutes, the time
15 it took for me to call the Court. She's
16 looking, gesturing in a way as if to say she's
17 holding it, inspecting every corner of it. We
18 need to move on.

19 MS. PANICO: You're unbelievable.

20 Mr. Henry, for the record I would like to
21 state that during those two minutes that I had
22 this document --

23 MR. HENRY: Three minutes, actually.

24 MS. PANICO: -- we were on the telephone
25 with the Court.

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2 I guess Mr. Henry expected me while I was
3 giving my argument to the Court to be reading
4 the document. I'm sorry if I'm incapable of
5 speaking to the Court while I'm also reading a
6 document. But I don't have that capability,
7 Mr. Henry. I am very proud of you if you do
8 have that ability, but that's not my
9 capabilities.

10 I'm now asking for the opportunity to
11 review the document as the Court said that I'm
12 entitled to do.

13 MR. HENRY: She said briefly. See the
14 exhibit tab and then that's it. That's where
15 we're at.

16 Counsel has had this exhibit now for five
17 minutes, plus the time we were on the phone
18 with the Court.

19 MS. PANICO: Mr. Henry, I'm not going to
20 read the document while you're speaking into
21 the record. If you will give me an opportunity
22 to review the document, it will take me all of
23 30 seconds to do.

24 (Counsel speaking simultaneously.)

25 MR. HENRY: We have 50 exhibits left to

1 V. Dinielli - 1/4/17

2 go. I can't afford for you to take five
3 minutes an exhibit --

4 MS. PANICO: If you would just stop
5 talking, then I can review the exhibit.

6 MR. HENRY: The document speaks for
7 itself. You provided it to us. It shouldn't
8 be difficult for you to recall a document you
9 gave us.

10 MS. PANICO: Are you done speaking?

11 BY MR. HENRY:

12 Q Do you recognize that document there
13 before you?

14 A Yes.

15 Q What do you recognize that document to be?

16 A As I stated before, I believe this has got
17 to do with the parking pass which I did state
18 before that I did deny her.

19 Q Drawing your attention to where it says
20 "To," do you see that?

21 A To?

22 Q Yes. To. Who is it addressed to?

23 A To. Earline Skates.

24 Q Who is it from?

25 A It's from me. Okay.

1 V. Dinielli - 1/4/17

2 Q And who is cc'd in there?

3 A Conor Kiran, Human Resources. And I sent
4 it to Earline's e-mail.

5 Q What --

6 A I don't really remember anything about
7 this to be totally honest.

8 Q Can you go ahead and read what it says
9 there?

10 A Reviewed your June 6th grievance, I don't
11 remember what the grievance is, and the current
12 Collective Bargaining Agreement. After my
13 review, I'm denying your request.

14 I don't really recall what the background
15 of this is. I have to be honest.

16 Q When you testified earlier that you had
17 not given Ms. Skates or denied Ms. Skates'
18 grievance in June of 2013, that was inaccurate,
19 right?

20 A It was accurate according to my
21 recollection. I do not recall this.

22 Q Do you usually give inaccurate testimony
23 or inaccurate responses when you don't have a
24 complete picture of the facts?

25 MS. PANICO: Objection to form.

1 V. Dinielli - 1/4/17

2 A I thought I had a picture of the facts.

3 Q So do you usually give inaccurate or
4 incorrect testimony when you think or you
5 thought you had a clear picture?

6 MS. PANICO: Objection to form.

7 A I answer at the time to what I believe is
8 true.

9 Q Well, now that you see this document here
10 in front of you, that testimony that you gave
11 earlier that you did not deny her grievance in
12 2013, that was inaccurate, right?

13 MS. PANICO: Objection to form.

14 A I don't even know what this was about. I
15 would have to see the June 6 grievance. I
16 don't even recall that.

17 Q But that testimony was inaccurate, right?

18 A I don't know that. I have not seen -- I
19 don't know what that -- I don't know what this
20 is. I don't recall this.

21 Q But that's your name, right?

22 A It is my name, yes.

23 So then if I did deny a request, then it's
24 right here that I did. Although my signature
25 is not on here, but usually I sign my things.

1 V. Dinielli - 1/4/17

2 But I guess, you know, if I sent it, I sent it.

3 I'm not saying I didn't. I don't recall.

4 Q So the testimony that you gave earlier was
5 incorrect, right?

6 A If this is correct, then it's incorrect.
7 Then I was mistaken.

8 Q Do you usually give mistaken and incorrect
9 testimony while you're under oath?

10 A I'm human. I'm doing the best I can.

11 Q So is it your testimony here today that
12 because you're human it excuses you from your
13 obligation to give truthful testimony while
14 under oath?

15 MS. PANICO: Objection to form.

16 A It doesn't excuse me but allows me.

17 Q You believe here and based upon your
18 testimony you're allowed to give inaccurate
19 testimony?

20 A I'm allowed to make a mistake.

21 Q So that's what you call giving inaccurate
22 testimony, making a mistake, right?

23 A I don't recall this. I don't recall this
24 conversation or this issue.

25 Q There ever come a time that you learned

1 V. Dinielli - 1/4/17

2 that Ms. Skates grieved the fact that she did
3 not have two consecutive days off from work?

4 A She agreed to it. I don't believe she
5 grieved it because that was the agreement that
6 we made.

7 Q So your testimony here today is that --

8 A She wanted the Sunday off. This was the
9 agreement that we made.

10 Q Earlier when I asked you whether or not
11 Ms. Skates had complained or grieved or
12 challenged your decision to have her not have
13 two consecutive days off, you said no, right?

14 A I said she agreed to it. That was the
15 agreement that we together came upon.

16 Q Then my question to you was: Why would
17 she agree to something and then complain about
18 it? Do you remember that question?

19 A Yes. I said to you she didn't come to
20 work on Sunday, but she did come to work on
21 Monday.

22 Q Then I also asked you whether or not
23 Ms. Skates grieved or complained about that
24 having two consecutive days off and you said
25 no, right?

1 V. Dinielli - 1/4/17

2 A I believe that after we made that
3 agreement, she went with the schedule.

4 MR. HENRY: At this time I would like to
5 mark for identification Plaintiff's 2.

6 (Whereupon, the aforementioned document,
7 was marked as Plaintiff's Exhibit 2 for
8 identification as of this date by the
9 reporter.)

10 BY MR. HENRY:

11 Q Do you see that document there?

12 A Yes, I do.

13 Q What do you recognize that document to be?

14 A It's a document about her grieving the two
15 days off.

16 Q When you testified earlier that Ms. Skates
17 did not grieve or complain about not having two
18 days off, that was inaccurate, right?

19 A You asked me if I remembered, if I recall,
20 and I said, no, I didn't and I still do not
21 remember.

22 Q Well, the testimony you gave earlier
23 pertaining to this particular grieving and
24 complaint about not having two days off, that
25 was incorrect, right?

1 V. Dinielli - 1/4/17

2 MS. PANICO: Objection to form.

3 A I still believe that and I have to check
4 the records as to when she started the
5 schedule. But I still believe that once she
6 started her schedule, she didn't grieve this
7 after. If I'm mistaken -- I run a whole
8 creation center, so if I'm mistaken, I don't
9 remember the timeline, that is very well
10 possible, but I didn't have copies of this.
11 This isn't part of the stuff that I looked at.

12 Q So do you usually give testimony where you
13 state one thing and then after you look at a
14 document you state another?

15 MS. PANICO: Objection to form.

16 A I usually don't give testimony, but when I
17 do give testimony as today, I do the best I
18 can.

19 Q So when you look at this document here and
20 you're drawing your attention to the lower
21 portion of the document where it says from
22 Earline Skates, sent Thursday, June 6, do you
23 see that?

24 A Uhm-uhm.

25 Q Do you see where it says "To"? Do you see

1 V. Dinielli - 1/4/17

2 that?

3 A Uhm-uhm.

4 Q What's the subject line there?

5 A "My work schedule starting June 17th."

6 Q And who is that addressed to?

7 A To me.

8 Q Can you go ahead and read what it says
9 there?

10 A "In reference to a memo dated
11 May 29th from you and presented to me on June 4
12 concerning my work schedule, I am grieving the
13 fact that I do not have two consecutive days
14 off from work."

15 Q Isn't that a grieving or complaint that
16 she doesn't have two consecutive days off?

17 A Yes. It's a complaint, yes.

18 Q So when you testified earlier that you
19 didn't receive a complaint from Ms. Skates,
20 that was incorrect, right?

21 MS. PANICO: Objection to form.

22 A I didn't -- well, it was incorrect. I
23 didn't recall.

24 Q Do you usually give incorrect testimony
25 while under oath?

1 V. Dinielli - 1/4/17

2 MS. PANICO: Objection to form.

3 A I don't usually give testimony.

4 Q But you usually tell the truth?

5 A I usually do.

6 Q So why didn't you tell the truth now?

7 A Because I didn't remember.

8 Q So do you lie when you don't remember?

9 MS. PANICO: Objection to form.

10 A No, I don't lie.

11 Q Do you not tell the truth?

12 A I tell the best to my ability.

13 Q Is your ability to not tell the truth?

14 A I'm not different from anybody else.

15 Q So is it your testimony here today that
16 everybody else lies under oath?

17 A Everybody else does the best they -- most
18 people try to do the best they can.

19 Q And that everybody else takes an oath and
20 lies.

21 Is that your testimony here today?

22 A I took an oath and I'm doing the best I
23 can.

24 MS. PANICO: Mr. Henry, she testified that
25 she couldn't recall. Please, let's just move

1 V. Dinielli - 1/4/17

2 on.

3 Q In fact, you weren't in possession of a
4 complaint that Ms. Skates made pertaining to
5 the two days --

6 A It looks that way.

7 Q So there was no agreement between you and
8 Ms. Skates pertaining to two consecutive days
9 off. Is she right?

10 A I still say there was an agreement.

11 Q Well, why would she agree to something and
12 then complain about it?

13 A I don't know why she did a lot of things.

14 Q One of the things we know that she didn't
15 do was agree to the agreement you say took
16 place?

17 MS. PANICO: Objection to form.

18 A She stayed home on Sundays. She came to
19 work on Monday.

20 Q But you knew that Ms. Skates complained
21 about not having those two consecutive days
22 off, right?

23 A Right. She called the union and the union
24 showed her where -- that she could do it if she
25 agreed to it. And we showed her cases where

1 V. Dinielli - 1/4/17

2 other people at times because of personal
3 issues also had a broken up schedule.

4 MS. PANICO: Can we just go off the record
5 for a second?

6 (Whereupon, an off-the-record discussion
7 was held.)

8 MS. PANICO: Back on the record.

9 MR. HENRY: May I have a readback of my
10 last question.

11 (Whereupon, the requested record was read
12 back by the Court Reporter.)

13 BY MR. HENRY:

14 Q May I have a response?

15 A That was my response.

16 MR. HENRY: What was the last question?
17 The actual question, I'm sorry.

18 (Whereupon, the requested record was read
19 back by the Court Reporter.)

20 BY MR. HENRY:

21 Q Did there ever come a time -- rather,
22 drawing your attention to the earlier part of
23 this e-mail, do you see there where it says
24 attached is -- from, do you see that?

25 A Yes.

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2 Q Do you see there where it says the date,
3 when was it sent?

4 A On June 6th. Thursday, June 6th.

5 Q Can you go ahead and read what your
6 response to her was?

7 A "Attached is a copy of my response to your
8 e-mail. I will give you the hard copy of this
9 memo upon your return to work at the recreation
10 center.

11 Q So, in fact, you were in possession of
12 Ms. Skates' complaint and you actually
13 responded to that complaint, right?

14 A I don't recall.

15 Q Well, is that not your name?

16 A It is -- I'm telling you I don't remember.
17 I don't remember this particular issue.

18 Q Is that not your e-mail address?

19 A Yes, it is.

20 Q Why didn't you put in the beginning of
21 this e-mail or why didn't you put in the body
22 of this e-mail the agreement that you claim
23 that you had?

24 A I have no idea. I have no idea.

25 Q Is it possibly because there was no

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2 agreement?

3 A I have no idea. This is four years ago.

4 I have no -- three years ago. I have no idea.

5 Three and a half years ago.

6 Q You just testified a few moments ago at
7 length that there was an agreement that you and
8 Ms. Skates had and you don't know why she did
9 half the things she did that you didn't know
10 why she would complain about an agreement,
11 right?

12 A It was a verbal agreement that took place
13 with representatives for her from her union.

14 Q Why is it that you wouldn't put here in
15 the e-mail that you wrote to her --

16 A I don't know why I didn't do that.

17 Q -- Ms. Skates, this is inconsistent with
18 our agreement? Why didn't you do that?

19 A I don't know why.

20 Q Don't you think that would have been
21 important to put in an e-mail?

22 A Hindsight is always 20/20.

23 Q Do you usually leave important details out
24 of e-mails?

25 A I don't think -- maybe I didn't think --

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2 maybe at that time I didn't think it was
3 important. I don't recall. I don't recall
4 writing this e-mail. I'm not denying writing
5 it. I'm saying I don't recall writing it or
6 what I was thinking at the time.

7 Q Do you usually write e-mails without
8 thinking?

9 MS. PANICO: Objection to form.

10 Q I'm waiting for an answer.

11 A I don't believe so, no. I didn't say I
12 wasn't thinking when I wrote this e-mail. I
13 said I don't recall what I was thinking.

14 Q Well, you were thinking that Ms. Skates
15 was complaining about the two consecutive days
16 that she didn't get, right?

17 A Yes.

18 Q And you knew at least in your mind that
19 you had some verbal agreement -- right?

20 A Yes.

21 Q -- where Ms. Skates was not complaining
22 about those two days, right?

23 A Uhm-uhm.

24 Q Well, why is it that you didn't put it in
25 your e-mail?

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2 MS. PANICO: Objection. Asked and
3 answered.

4 Q I'm still waiting for an answer.

5 A I don't know why I didn't do it.

6 Q Is it because there was no such agreement?

7 MS. PANICO: Again, asked and answered
8 several times.

9 Q Did there ever come a time that you
10 learned in or around June 2013 that Ms. Skates
11 was in the hospital?

12 A According to my recollection, I remember
13 her calling me and telling me she was in the
14 hospital after she was in the hospital. That's
15 when I said, you need -- you know, could you
16 give us -- send us some -- you know, a doctor's
17 note.

18 Q Did she make that request directly to you
19 or did she, rather, provide that information
20 directly to you or was it provided to someone
21 else?

22 A I believe it was provided to me.

23 Q Did you ever receive an e-mail from
24 Ms. Skates explaining to you or responding to
25 you advising you that she was in the hospital

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2 and that was why she had excessive absences?

3 A I don't remember an e-mail. I'm not
4 saying yes or no. I do not remember. I just
5 remember a doctor's note saying that she was
6 going to return to work on the 16th of June.

7 Q Did there ever come a time that --
8 withdrawn.

9 MR. HENRY: At this time I would like to
10 mark for identification Plaintiff's Exhibit 3.

11 (Whereupon, the aforementioned document,
12 was marked as Plaintiff's Exhibit 3 for
13 identification as of this date by the
14 reporter.)

15 BY MR. HENRY:

16 Q Do you see that document there in front of
17 you?

18 A Yes, I do.

19 Q What do you recognize that document to be?

20 A When I requested a note from her
21 physician.

22 Q Drawing your attention to where it says
23 "To," do you see that?

24 A Yes.

25 Q I'm sorry. One moment.

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2 MR. HENRY: Do you have any objection with
3 striking that part of the transcript because I
4 have -- the tab was -- I had it misplaced?

5 MS. PANICO: You want to just go on the
6 record and correct -- just change --

7 MR. HENRY: She already testified to it,
8 what that particular one was. So I didn't want
9 to -- I just want to make it a nullity as if it
10 didn't even exist just to make sure that we
11 stay on track.

12 MS. PANICO: I don't understand what
13 you're asking me.

14 MR. HENRY: Would you have any objection
15 to striking that portion of the record that I
16 asked her a question about that last exhibit
17 that I just gave her?

18 MS. PANICO: Frankly, I don't remember.
19 It was just -- didn't you justify it? That was
20 it.

21 Read back that section.

22 (Whereupon, the requested record was read
23 back by the Court Reporter.)

24 MR. HENRY: So I'm going to give you
25 previously incorrectly marked as 3. Do you

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2 understand? Because I had said 3 before and
3 there was questions about it. So I was
4 wondering if you wanted to just --

5 MS. PANICO: This is a totally different
6 exhibit?

7 MR. HENRY: Exactly. This is the correct
8 3. But before it was marked incorrectly.

9 MS. PANICO: Okay. Can we say what that
10 old one is now?

11 MR. HENRY: I'm going to give it as the
12 next one.

13 MS. PANICO: Now it's marked as 4.

14 MR. HENRY: Bates stamped as 375.

15 MS. PANICO: Just go on the record and say
16 that Plaintiff's Exhibit 3 is marked Bates
17 stamp 374 and the other one, Exhibit 4, is
18 Bates stamped whatever it is.

19 MR. HENRY: At this time previously
20 identified as Plaintiff's 3 but was incorrectly
21 labeled as 3, identified by Document 000375,
22 that document now is marked as Plaintiff's
23 Exhibit 4. And the correct Exhibit 3, Bates
24 stamped as 000374, is the actual document in
25 front of the witness.

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2 BY MR. HENRY:

3 Q Do you see that document there in front of
4 you?

5 A Yes.

6 Q What do you recognize that document to be?

7 A It was an e-mail sent to me from
8 Ms. Skates stating that she was in the hospital
9 and she was supplying copies of doctor's notes.

10 Q You see some notation there. What does
11 that notation there say?

12 A The handwritten notation?

13 Q Yes.

14 A I sent a copy with the note by e-mail on
15 the 21st of June.

16 Q Who did you send that to?

17 A Conor Kiran.

18 Q Then you also see there at the bottom that
19 there's a notation there that says -- what does
20 that notation say?

21 A That's to an individual in the law firm.

22 Q Do you know who that individual is?

23 A Steve Marquis, I believe.

24 Q Do you ordinarily send these type of
25 documents to HR?

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2 A I assume I was instructed to do so.

3 Q Who would have instructed you to do so?

4 A Conor Kiran.

5 Q Do you recall when you made -- when you
6 sent this over?

7 A It says Friday, June 21st. So I guess
8 that's when it was.

9 Q So is it typical practice to send an
10 e-mail or copies of an e-mail with doctor's
11 notes to Mr. Kiran and to the lawyer?

12 A Yes. Well, to Mr. Kiran, yes.

13 Q How about to the lawyer?

14 A No. He probably instructed me to because
15 obviously I didn't even know his e-mail.

16 Q When you testified earlier that you never
17 received any information or had no knowledge of
18 any leave requests or disability that
19 Ms. Skates had or any requests for sick, that
20 was inaccurate, right?

21 MS. PANICO: Objection to form.

22 A No.

23 Q Well, drawing your attention here, what
24 does it say in the body of this e-mail here?

25 A This was notification after she had taken

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2 the sick time.

3 When I said I was never notified of leave
4 requests, I assume you're asking me if she
5 asked me if she could take off because she
6 needed time off in the future. This is -- I
7 was obviously aware of time she took off in the
8 past and doctor's notes that were implying for
9 illnesses that were in the past.

10 Q Did there ever come a time that you
11 requested from Ms. Skates a note from her
12 doctor to substantiate her request for sick
13 leave time?

14 A For sick leave time had been taken
15 already?

16 Q Or for future sick leave time.

17 A I never asked for future sick leave time.
18 Past because she was taking so much time I
19 asked her for a doctor's note justifying or
20 verifying the time she had taken.

21 Q So it's your testimony here today that the
22 only note that you requested from her doctor
23 was that pertaining to past sick leave time?

24 A Yes.

25 MS. PANICO: Objection to form.

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2 Q Is that right?

3 A Yes.

4 MR. HENRY: At this time I would like to
5 mark for identification Plaintiff's 4.

6 (Whereupon, the aforementioned document,
7 was marked as Plaintiff's Exhibit 4 for
8 identification as of this date by the
9 reporter.)

10 BY MR. HENRY:

11 Q Do you see that document there in front of
12 you?

13 A Yes.

14 Q What do you recognize that document to be?

15 A This obviously was the document before
16 that asking for time for the time that she had
17 for her recent request for sick time that had
18 been taken already.

19 Q Drawing your attention to where it says
20 "From," do you see that?

21 A Yes. That's me.

22 Q Drawing your attention to the date, do you
23 see that?

24 A Yes. That's June 10th.

25 Q Who was it addressed to?

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2 A Earline Skates.

3 Q Who was it from? I'm sorry. Who was cc'd
4 in that?

5 A Liz Jeffries. She does the payroll cards
6 for my department.

7 Q Would you agree that if someone makes a
8 request for something it means that they are
9 requesting it in the future?

10 A No.

11 Q Would you agree that if I make a recent
12 request for something that that pertains to a
13 recent set of circumstances?

14 A The reason why Liz Jeffries is copied is
15 because she has to justify all of the time that
16 had been marked on the books that we were
17 paying her for.

18 Q So my question is: Can one make a recent
19 request for something that happened in the past
20 or is it a recent request pertaining to a
21 request that's made right here recently?

22 MS. PANICO: Objection. Calls for
23 speculation.

24 Q You may answer.

25 A It's the past. It was the immediate past.

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2 It wasn't three months ago. It was the
3 immediate past. She was running out of time.

4 Q Drawing your attention to this document
5 here in front of you where it says, I am
6 requesting a note from your physician to
7 substantiate your recent request for sick time.

8 A Right.

9 Q Right?

10 A Yes. She was asking to be paid for days
11 that she didn't come to work. She called out
12 sick and expected to be paid.

13 Q Well, is there any reason why you didn't
14 put in here that you were reviewing a recent
15 past request for past sick time?

16 MS. PANICO: Objection. Calls for
17 speculation.

18 A No. This is the way I worded it.

19 Q Did there ever come a time -- withdrawn.

20 You testified earlier that Ms. Skates was
21 terminated right after she notified you of a
22 sick -- of a work-related injury, right?

23 A She had come in with her arm in a sling
24 and I notified Human Resources that she was in
25 the building.

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2 Q So you knew at the very least that she had
3 a work-related injury that triggered protection
4 under the FMLA, right?

5 MS. PANICO: Objection to form. Multiple
6 grounds.

7 Q Is that right?

8 You can answer.

9 A I didn't know or believe that it was a
10 work-related injury.

11 Q That's because you had training in FMLA?

12 A No. It's because I saw her leave the day
13 before in perfect health, in what I assumed to
14 be perfect health. I said good-bye to her
15 because I happened to be in the office.

16 Q So your testimony here today is that you
17 have a trained eye for what is a qualified
18 disability or not?

19 A I'm claiming that when I saw her, she
20 didn't look like she was injured. Yes.

21 Q So your testimony here today is that you
22 got the eye --

23 A It surprised me. It surprised me because
24 I didn't believe her to be injured when I
25 saw -- when she left at the end of the previous

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2 workday.

3 Q So is it your testimony here today that
4 injuries, work-related injuries can't happen in
5 the space of the day?

6 A I said I was surprised.

7 Q You have the crystal ball of when
8 work-related injuries could happen?

9 A I said I was surprised.

10 Q Well, aren't we all surprised when
11 accidents happen?

12 MS. PANICO: Objection to form.

13 A When she left the building, she seemed to
14 be fine. She had her pocketbook in her hand.
15 She didn't seem to be complaining and she
16 didn't report an injury.

17 Q That was the day before, right?

18 A That was the day before.

19 Q So your testimony here today is that you
20 are gifted to know when -- withdrawn.

21 Do you know when and how accidents happen?

22 MS. PANICO: Objection to form.

23 Q You may answer.

24 A Not always.

25 Q So you know instances when accidents are

1 V. Dinielli - 1/4/17

2 going to happen?

3 A No. Not always. I don't know.

4 Q So how would you know that Ms. Skates did
5 not have a work-related injury based upon what
6 you claim that you saw her or the condition you
7 saw her in the day before?

8 MS. PANICO: Objection to form.

9 A The end of the work day, she came in, she
10 had her bag, she had her pocketbook. She
11 punched out. She said good-bye to everybody.
12 She did not fill out an incident report stating
13 that she was not feeling well or thought she
14 might have had an injury. She did not say
15 anything. So it surprised me a bit when the
16 next day she came in with her arm in a sling.

17 Q When she came in with her arm in a sling,
18 did you write her up?

19 A Why would I write her up?

20 Q Did she engage in any type of erratic
21 disrespectful behavior?

22 A No. She was pleasant.

23 Q What day was that?

24 A That was October 22nd.

25 Q How about the 23rd? Was she pleasant on

1 V. Dinielli - 1/4/17

2 that day too?

3 A I don't recall. If I had my dates mixed
4 up, then I have my dates mixed up, but I do not
5 see her after that day.

6 Q So after you learned that Ms. Skates had
7 an injury and that she came in to work with a
8 sling, was there any point after that that
9 Ms. Skates was unpleasant or disrespectful or
10 rude to you?

11 MS. PANICO: Objection to form.

12 A She was terminated and left the building.
13 So I didn't see her after that.

14 Q Why was she terminated, if you remember?

15 A She was terminated for reasons of
16 excessive absence, for racial comments that she
17 made to other members of the staff and to
18 patrons in the facility.

19 Q You testified earlier that Ms. Skates was
20 not written up. Only time she was written up
21 was as a result of disrespecting you.

22 MS. PANICO: Objection to form.

23 Q Isn't that right?

24 A You said that. I said I didn't recall.

25 Q Did you write her up?

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2 A I don't recall.

3 Q Did you write her up for --

4 A I don't recall.

5 Q Okay.

6 Did you write -- withdrawn.

7 A We have to go back and see and look at the
8 files. I don't recall.

9 Q Withdrawn.

10 During a break, did you confer with your
11 attorney with respect to my questions?

12 A No.

13 MS. PANICO: Objection.

14 This is attorney-client privileged
15 information. I'm directing her not to answer.

16 Q During the break, were you provided with
17 any information on how to respond to my
18 questions without revealing the subject of that
19 communication with your attorney?

20 MS. PANICO: Objection.

21 Attorney-client privilege. I'm directing
22 you not to answer.

23 MR. HENRY: I've limited my question.
24 I've limited my question.

25

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2 BY MR. HENRY:

3 Q Without telling me anything at all, any
4 communications that you had with your attorney,
5 were you provided with any guidance on how to
6 respond to my question?

7 MS. PANICO: Objection.

8 Don't answer.

9 Q You may answer.

10 MS. PANICO: I'm directing you not to
11 answer.

12 MR. HENRY: What grounds?

13 MS. PANICO: Attorney-client privilege.

14 MR. HENRY: On what grounds. I've limited
15 it. I don't need to know what she --

16 MS. PANICO: It doesn't matter.

17 MR. HENRY: It does matter. What is the
18 basis?

19 MS. PANICO: You're still asking her what
20 we discussed.

21 MR. HENRY: No, I'm not.

22 MS. PANICO: Yes, you are.

23 MR. HENRY: I'm asking her if she received
24 from any source information on how to respond
25 to my questions. It doesn't have to be you.

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2 It could be in her e-mail. It could be a phone
3 call.

4 BY MR. HENRY:

5 Q We had a break. Did you receive from any
6 source, any source without telling me who it
7 was --

8 MS. PANICO: Did you speak to anybody --

9 MR. HENRY: No. You can't answer the
10 question -- no. You can't ask my questions.

11 MS. PANICO: Well, I'm directing her not
12 to answer.

13 (Counsel speaking simultaneously.)

14 MR. HENRY: How are you directing her not
15 to answer a question I haven't asked yet?

16 MS. PANICO: You're asking her what we
17 discussed on the break.

18 MR. HENRY: I'm not asking you do that.

19 And the record is clear.

20 BY MR. HENRY:

21 Q During the break, from anyone, without
22 telling me who, I don't want to know who it
23 was, did you receive any instruction on how to
24 respond to my questions?

25 MS. PANICO: Objection.

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2 Q Without telling me who. I don't want to
3 know who.

4 MS. PANICO: Attorney-client privilege.

5 Q I don't know if it's your lawyer. Anyone.

6 MS. PANICO: Don't answer.

7 Q You may answer.

8 MS. PANICO: I'm telling you not to
9 answer.

10 MR. HENRY: I got to call the Court.

11 I've limited it.

12 MS. PANICO: It's after 5 o'clock. The
13 Court is not going to be there. So you'll have
14 to preserve your question.

15 MR. HENRY: The Court works late.

16 (Whereupon, a short recess was taken.)

17 MR. HENRY: I limited it. I don't need to
18 know who it was from. I'm not asking from you.
19 I'm asking from anyone because --

20 MS. PANICO: Well, why don't you start
21 off --

22 MR. HENRY: I want to make sure --

23 MS. PANICO: -- by asking whether or not
24 she spoke to anybody other than me? If she
25 didn't speak to anybody other than me --

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2 MR. HENRY: No. I'm not asking you to lay
3 a foundation. I'm asking this witness a
4 pointed question. I don't need to know --

5 MS. PANICO: I'm just saying we could
6 avoid having to get the Court involved. If she
7 didn't speak to anybody other than me --

8 (Counsel speaking simultaneously.)

9 MR. HENRY: We don't know that. I wish I
10 could get --

11 MS. PANICO: I'm telling you to ask that.

12 MR. HENRY: No. You can't tell me that.

13 Let the record reflect that the witness is
14 now looking at her phone and --

15 THE WITNESS: I'm just texting my
16 children --

17 MR. HENRY: That's fine. There's nothing
18 wrong with you looking at it.

19 BY MR. HENRY:

20 Q My question again is without your --
21 without asking you any questions about whatever
22 you and your attorney spoke about, I really
23 don't care about that, I need to know if you
24 received from anyone, any human being with a
25 heart that blood pumps through their body any

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2 information or instructions on how to respond
3 to my questions.

4 MS. PANICO: I'm maintaining my objection.

5 Q You may answer.

6 MS. PANICO: Don't answer.

7 Q You may answer the question.

8 MS. PANICO: I'm her attorney --

9 MR. HENRY: I have every right --

10 MS. PANICO: -- and I am directing her not
11 to answer the question.

12 MR. HENRY: Ms. Panico, I have every
13 right --

14 MS. PANICO: Don't tell her to answer the
15 question when I'm directing her not to.

16 MR. HENRY: Let the record reflect that
17 Ms. Panico is reaching across the table --

18 MS. PANICO: I'm not reaching across the
19 table, Mr. Henry.

20 MR. HENRY: -- yelling at me.

21 I have every right to ask this question if
22 she -- ask the witness a question if she
23 received any information on how to respond to
24 my questions from anyone, number one, is
25 relevant because these questions are designed

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2 to test this witness' credibility. If this
3 witness went out and had a discussion with --
4 and I'm not talking about a lawyer -- with
5 anyone with a heartbeat.

6 THE WITNESS: I didn't leave the room.

7 MS. PANICO: Don't answer. Let him pursue
8 whatever he wants to with the Court.

9 MR. HENRY: She can speak.

10 MS. PANICO: No, she can't speak.

11 MR. HENRY: Let the record reflect that
12 the Court Reporter in a sign of what I
13 interpreted is frustration with Ms. Panico's
14 continued ability to not allow me to make my
15 record --

16 MS. PANICO: You are amazing.

17 MR. HENRY: -- because I was speaking and
18 Ms. Panico -- my record was incomplete.

19 BY MR. HENRY:

20 Q My question again is, Ms. Dinielli, I
21 don't want to know what you and your lawyer
22 talked about. I really, quite frankly, don't
23 care what you and your lawyer talked about. My
24 question is limited.

25 Did you receive any guidance, instruction,

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2 I'm not talking about what you and your lawyer
3 talked about, on how to respond to my
4 questions?

5 And the reason why I'm asking that is
6 because I believe that it's wholly improper if
7 you did. And I need to be able to test your
8 credibility. I don't need to know what you and
9 your lawyer may or may not have spoke about. I
10 just need to know if you received any
11 information or guidance from anyone with a
12 heartbeat on how to respond to my questions.

13 MS. PANICO: Mr. Henry, the way you're
14 phrasing the question that way, I'm not going
15 to allow my client to answer. However, if you
16 would like to rephrase it, I have a suggestion.
17 Perhaps you can ask her whether or not she --
18 anybody other than her attorney asked her --

19 MR. HENRY: I just said I don't care about
20 her attorney.

21 MS. PANICO: I don't feel comfortable with
22 the way that the question is asked.

23 MR. HENRY: It doesn't matter. You have
24 now instructed this witness not to answer a
25 question with no grounds. I've said it so many

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2 different ways.

3 BY MR. HENRY:

4 Q Ms. Dinielli, I do not care about what you
5 and your lawyer spoke about. That's not what I
6 want to know.

7 What I want to know is: Did you receive
8 instruction, guidance, not what you and your
9 lawyer talked about, from anyone with a
10 heartbeat.

11 MS. PANICO: So from anybody other than
12 your counsel. Did anybody direct you on how to
13 respond?

14 THE WITNESS: No.

15 Q Did you receive any instruction on how to
16 respond to my question?

17 A No.

18 Q From anyone with a heartbeat?

19 A No.

20 MS. PANICO: With the exception of your
21 counsel.

22 MR. HENRY: Let the record reflect that
23 Ms. Panico now has wasted 15 minutes of my time
24 with this nonsense and instructing her client
25 not to answer a question that I have limited

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2 and said that I didn't want to know anything
3 about the attorney-client communications.

4 My concern was, and I've had this in other
5 cases, where witnesses that are under oath go
6 out and receive e-mails, they receive
7 documents, they make a phone call and then they
8 are giving insight on how to respond to my
9 question. My question was not designed to test
10 whether or not you coach her.

11 MS. PANICO: You spent the last five
12 minutes wasting more time. So why don't you
13 just move on, Mr. Henry.

14 MR. HENRY: I'm making my record.

15 And for Ms. Panico to do what she just did
16 by wasting so much time, I think it's just in
17 line with her conduct the entire course of this
18 deposition. And we will certainly deal with it
19 in kind.

20 BY MR. HENRY:

21 Q Again, so is your answer now with respect
22 to receiving instructions or guidance from
23 anyone with a heartbeat, is it your testimony
24 here today that you didn't receive such
25 guidance, knowledge or --

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2 MS. PANICO: Objection.

3 Q -- during a break?

4 MS. PANICO: Objection.

5 Can you please read back that question?

6 MR. HENRY: I said without the lawyer.

7 With the exception of the lawyer.

8 MS. PANICO: I didn't hear the question
9 that you asked. I'm asking it to be read back,
10 please.

11 BY MR. HENRY:

12 Q During the time --

13 MR. HENRY: I'm not going to waste any
14 time.

15 Can you note this part of the transcript
16 for a ruling, please?

17 MS. PANICO: Are you withdrawing the
18 question?

19 MR. HENRY: No, I'm not. I'm noting it
20 for a ruling.

21 MS. PANICO: I'm asking -- so you're going
22 to ask it be marked for a ruling when I didn't
23 hear the question?

24 (Counsel speaking simultaneously.)

25 MR. HENRY: This is my -- you should have

1 V. Dinielli - 1/4/17

2 been paying attention. Maybe if you had taken
3 your phone call with Dan Panico who was just
4 calling, as it's on our conference table, as
5 it's affecting my ability -- vibrating the
6 table, I think that we would have been --

7 MS. PANICO: You know what, you're
8 harassing me. I'm ending this deposition right
9 now.

10 MR. HENRY: On what grounds?

11 MS. PANICO: You're harassing me. You've
12 been harassing the witness throughout the
13 entire day. I'm ending the deposition right
14 now.

15 MR. HENRY: Go ahead. End it. If that's
16 what you want to do. You're terminating the
17 deposition. Go ahead. End it.

18 MS. PANICO: Can you please stop attacking
19 me?

20 MR. HENRY: How have I attacked you?

21 MS. PANICO: Repeatedly throughout this
22 deposition.

23 This is my final warning. If you
24 continue, I am leaving.

25 MR. HENRY: Ms. Panico, you could do

1 V. Dinielli - 1/4/17

2 whatever you want to.

3 MS. PANICO: Nobody would put up with what
4 I put up with.

5 MR. HENRY: Ms. Panico, you can do
6 whatever you choose. The record is clear. And
7 this is the reason why I videotape my
8 depositions.

9 MS. PANICO: Yeah. Exactly. Because you
10 are the most difficult person to deal with in
11 the entire world. This is exactly why you need
12 to record.

13 MR. HENRY: Thank you.

14 The record is very clear. My questions
15 are in line with those that are asked.

16 Ms. Panico did not hear the question that
17 I asked.

18 MS. PANICO: And you refusing to allow the
19 Court Reporter to read it back to me?

20 THE COURT REPORTER: I'm sorry. There's
21 going to be a lot of "Counsel speaking
22 simultaneously in the transcript."

23 MR. HENRY: I understand.

24 MS. PANICO: Yup.

25 MR. HENRY: So may I finish my -- what I

1 V. Dinielli - 1/4/17

2 was stating before Ms. Panico interjected.

3 MS. PANICO: If you'll allow me to speak.

4 THE COURT REPORTER: And you're still
5 doing it.

6 MS. PANICO: Because he doesn't allow me
7 to speak.

8 MR. HENRY: Could you put that in, please,
9 that I'm talking and what she said.

10 Let the record reflect that, again, the
11 Court Reporter has expressed tremendous
12 frustration with the direction of this
13 deposition and the simultaneous discussions.

14 The last I checked, I had an open
15 question. And Ms. Panico asked to have a
16 readback of my question when it's my
17 deposition. All I said was you probably didn't
18 hear the question because your cell phone,
19 which is on the conference room table, which
20 did light up and vibrate, which did have the
21 name Dan Panico, probably the reason why you
22 didn't hear it. That's all I said. It was not
23 intended to harass you.

24 I don't need a readback of my question. I
25 just need to move forward with the next

1 V. Dinielli - 1/4/17

2 question.

3 MS. PANICO: And if I may. Number one,
4 requested a readback of the question which
5 Mr. Henry refused to do, which is a common
6 courtesy that normal professionals grant to one
7 another.

8 And second of all, I was not looking at my
9 phone which is absolutely absurd. I was
10 listening and thinking about the question. And
11 I asked to have it read back because I wanted
12 to determine whether or not I needed to make an
13 objection.

14 MR. HENRY: Okay. Well, you can't -- if
15 every defendant -- if every defense witness or
16 defense counsel had the ability to ask a
17 readback for a question before they decide to
18 object to that question, I don't think we would
19 ever get through the rest of questions.

20 MS. PANICO: I asked to do it one time,
21 Mr. Henry. Is that taking out too much of your
22 time?

23 MR. HENRY: Moving on, please.

24 MS. PANICO: Please move on.

25

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2 BY MR. HENRY:

3 Q So with respect to the document there in
4 front of you, marked as Plaintiff's
5 Exhibit 4 --

6 MS. PANICO: Do you have some sort
7 air-conditioning? It's like 90 degrees in
8 here.

9 MR. HENRY: I will look into it.

10 MS. PANICO: Are you going to look into it
11 now?

12 MR. HENRY: No. We're in the middle of a
13 deposition. I'll send a message.

14 MS. PANICO: I'd ask that you do that now
15 because I am extremely warm. And I'm normally
16 a person that's not.

17 MR. HENRY: Well, we have water here, but
18 I have --

19 MS. PANICO: You actually took my water
20 bottle away from me.

21 MR. HENRY: Here's another one. We have
22 plenty of water here to go around. Quench your
23 thirst.

24 BY MR. HENRY:

25 Q Ms. Dinielli, earlier you testified that

1 V. Dinielli - 1/4/17

2 there had only been one time that Ms. Skates
3 was written up from the time that she
4 disrespected you to the time that she was
5 written up, right? And that was for the
6 insubordination.

7 MS. PANICO: Objection to form. That's
8 not what she testified to.

9 Q Was there any other writeups other than
10 the one for insubordination?

11 A I said I don't recall.

12 Q Did you ever write Ms. Skates up for using
13 offensive racial slurs?

14 A No. But there were complaints from
15 employees that they presented complaints.

16 Q Did you ever write Ms. Skates up for --

17 A I don't recall. I don't recall.

18 Q Did you ever meet with Ms. Skates in your
19 office where you have a door to say that you
20 are being accused of racial --

21 A I don't believe so.

22 Q So you never met with her, right?

23 A No, I don't believe so.

24 Q You never wrote her up for racial slurs,
25 right?

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2 A I don't recall.

3 Q But you could recall writing her up and
4 you can recall writing her up because she waved
5 her finger and walked out and left your office.
6 You could recall writing her up for that,
7 right?

8 A Yes.

9 Q But you can't recall writing her up for
10 using racial slurs?

11 A (There was no response.)

12 Q What do you think is more egregious,
13 Ms. Dinielli, using racial slurs or walking
14 out --

15 A I never experienced the racial slurs. The
16 people that experienced and heard them are the
17 ones that made the complaint.

18 Q Were those complaints in writing?

19 A They were forwarded to Human Resources,
20 yes.

21 Q Were those complaints in writing?

22 A I don't recall.

23 Q Did you ever see a written complaint?

24 A I don't recall.

25 Q Well, you recall that Ms. Skates turned

1 V. Dinielli - 1/4/17

2 around and waved her finger and stormed out of
3 your office that you called her back?

4 A Yeah. Because that was quite impressive.

5 Q Well, don't you think racial slurs are
6 quite impressive too?

7 A I didn't -- I wasn't there for the racial
8 slurs. If I was there, then I would have. I
9 was there when the employees were complaining
10 about it, that I was there for. That, I do
11 remember.

12 Q But you don't remember ever receiving
13 anything in writing about that now, do you?

14 A No, I don't.

15 Q You had never got any written complaints
16 about Ms. Skates, right?

17 MS. PANICO: Objection to form.

18 A I don't recall.

19 Q You couldn't recall ever getting any
20 written complaints from employees pertaining to
21 racial slurs, right?

22 MS. PANICO: Objection to form.

23 A I didn't get them, but I believe they were
24 written up in Human Resources because it's not
25 really practice for them to come to me. If

1 V. Dinielli - 1/4/17

2 they come to me, I tell them to go to Human
3 Resources. I believe Human Resources wrote
4 them up, however, I don't recall seeing it.

5 Q But you've never seen any writeup, right?

6 A I don't recall seeing the writeup.

7 Q Now, your testimony pertaining to these
8 racial slurs and that you heard about it from
9 the employees, is it possible that you were
10 mistaken just as you were mistaken that
11 Ms. Skates made an agreement with you that she
12 didn't have a problem with not working two
13 consecutive days?

14 MS. PANICO: Objection to form. Again
15 you're mischaracterizing her testimony. She
16 never testified that she didn't -- that there
17 was no agreement. She never testified to that.

18 The record will speak for itself as to
19 what she testified to. You don't need to
20 continue to mischaracterize what she's been
21 saying.

22 BY MR. HENRY:

23 Q You were Ms. Skates' direct supervisor;
24 isn't that right?

25 A Not direct. I said I was the director of

1 V. Dinielli - 1/4/17

2 the facility for which 20 full-time employees
3 are employed and probably close to 75
4 part-time.

5 Q Did John Henry write Ms. Skates up for
6 racial slurs?

7 A I don't believe so.

8 Q Did James Beauford write Ms. Skates up for
9 racial slurs?

10 A No. I believe the individuals that had
11 the complaints went to Human Resources.

12 Q Did Mr. Murphy write Ms. Skates up for
13 racial slurs?

14 A No.

15 Q Did the building maintenance maintain or
16 write Ms. Skates up for racial slurs?

17 A No.

18 Q Did any of the other rec attendants write
19 Ms. Skates up for racial slurs?

20 A They went to Human Resources and they
21 filed the complaints.

22 Q So your testimony here today is that the
23 other rec attendants went to Human Resources
24 and filed complaints?

25 A I believe they did. That is what I

1 V. Dinielli - 1/4/17

2 believe.

3 Q But you don't know for sure because you've
4 never seen the complaints?

5 A I never saw them write it up. I witnessed
6 them complain to Human Resources and tell their
7 recollection.

8 Q But you've never seen any writeups?

9 A I don't recall seeing anything.

10 Q How about the laborers?

11 MS. PANICO: Can you allow her to finish
12 her response before you ask another question?

13 MR. HENRY: The objection is noted.

14 A I don't recall seeing anything written up.

15 Q Did the laborers write her up?

16 A No.

17 Q So, in fact, as you're sitting here today,
18 you've never seen a writeup for racial slurs?

19 A I don't recall.

20 Q But you recall writing her up because she
21 waved her finger?

22 A Yes.

23 Q You recall who was in the room -- on the
24 far side of room when you spoke to her about a
25 private discussion pertaining to her vacation

1 V. Dinielli - 1/4/17

2 and comp time, right? You recall that, right?

3 A Yes, I do. Because that was firsthand
4 knowledge.

5 Q Earlier when I asked you how is your
6 memory, you testified that your memory was
7 average, but that you don't forget things
8 often. Right? Why would you forget who or why
9 or whether or not there was a writing
10 pertaining to racial slurs that Ms. Skates is
11 alleged to have made?

12 MS. PANICO: Objection to form.

13 A I run a 750 square foot facility. I run
14 events all over the Village. Ms. Skates was
15 not my only priority at the time.

16 Q Well, she was your priority certainly from
17 June, when she disrespected you, to July when
18 you told her that you were going to fire her if
19 she didn't come back to work. And she
20 certainly was your priority when you told her
21 that she was going to lose her accumulated time
22 because she couldn't find her card.

23 Right? She was a priority then, right?

24 MS. PANICO: Objection to form.

25 A She was my priority. Those issues were a

1 V. Dinielli - 1/4/17

2 priority at the time such as probably hundred
3 others.

4 Q So you could recall the square footage of
5 the facility, the employee count and the
6 program you run in Freeport, but you can't
7 recall who, where, when, what document, where
8 the writeup is pertaining to slurs that she's
9 alleged to have made?

10 MS. PANICO: Objection to form.

11 She specifically testified that she
12 recalls the conversations that she had with the
13 individuals who told her about the racial
14 slurs. She can't remember written complaints.

15 Please stop mischaracterizing her
16 testimony.

17 MR. HENRY: At this time I would like to
18 mark for identification Plaintiff's Exhibit 5.

19 (Whereupon, the aforementioned document,
20 was marked as Plaintiff's Exhibit 5 for
21 identification as of this date by the
22 reporter.)

23 BY MR. HENRY:

24 Q Do you see that document there in front of
25 you?

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2 A Yes, I do.

3 Q What do you recognize that document to be?

4 A I recognize it to be a letter that was
5 sent to Ms. Skates after her termination
6 telling her that she was not allowed on the
7 ground or in the facility.

8 Q Can you go ahead and tell me what the date
9 of that letter is?

10 A October 23rd, the day after she was
11 terminated.

12 Q With respect to this letter, can you go
13 ahead and do me a favor and read the first
14 paragraph? Actually, go ahead and read us the
15 letter.

16 A "Dear, Ms. Skates: As you know, your
17 employment with the Village of Freeport was
18 terminated effective 10/22/13. Including in
19 the charges and specifications against you are
20 charges based upon offensive racial slurs made
21 by you and directed at both employees and
22 patrons of the recreation center.

23 "The Village of Freeport will not tolerate
24 such behavior at its facilities and will
25 protect its employees and patrons from any such

1 V. Dinielli - 1/4/17

2 harassment. Therefore, we are barring you from
3 entry to the recreation center. You are not
4 permitted entry to that facility or its ground
5 at any time for any reason. Should you feel
6 that for some reason entry is critical, you may
7 contact the undersigned and I will arrange for
8 you to have supervised escorted access. We
9 will consider unauthorized entry as an act of
10 trespass and pursue charges against you. Your
11 compliance with this directive is therefore
12 critical.

13 "Very truly yours, Conor Kiran, Executive
14 Director of Human Resources."

15 Chief of Police, Howard, the Village
16 Attorney, and myself were copied on this
17 letter.

18 Q You testified earlier that Ms. Skates was
19 pleasant in October 2013. She was specifically
20 pleasant when you saw her in a sling on her
21 arm, right?

22 A I said that she was pleasant on the
23 morning of -- that she came in. She was in
24 pain and she was pleasant.

25 Q You testified that she wasn't rude, right?

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2 A Yes, I did. On that day she wasn't rude.

3 Q You also testified that was the day that
4 you learned that she suffered a work-related
5 injury, right?

6 A That she claimed she had a work-related
7 injury.

8 Q In fact, you actually saw her in the lobby
9 as she left, right?

10 A No.

11 Q You testified that you learned --

12 A That was the day before. The day before I
13 saw her in the lobby when she left. I saw her
14 punching out. That was on the 21st.

15 Q You also testified that she wasn't even in
16 thereafter, right?

17 A In the building?

18 Q Yes.

19 A Yes, I did.

20 Q So the last time that Ms. Skates was in
21 the building was the day that you saw her out
22 of the building?

23 A I didn't see her out. But whoever -- but
24 the day she left after she was terminated.

25 Q So, in fact, this letter here that says

1 V. Dinielli - 1/4/17

2 that Ms. Skates was terminated effective a day
3 that she wasn't even at work was inaccurate,
4 right?

5 A No. That was the date. The 22nd was the
6 date she came in and they terminated her. She
7 was terminated.

8 Q Did you ever provide Ms. Skates with
9 charges and specifications?

10 A I didn't but the Village attorney and
11 Human Resources, they took control of the
12 meeting.

13 Q Did you ever provide Ms. Skates or did you
14 ever review a -- charges and specifications
15 that is were filed against Ms. Skates? Did you
16 ever see those?

17 A As I said, the termination hearing, the
18 termination meeting was not -- I did not, you
19 know, spearhead that meeting.

20 Q Have you ever seen charges and specifics
21 against Ms. Skates pertaining to what she's
22 alleged to have done on the day that she was
23 off?

24 MS. PANICO: Objection to form.

25 Q Have you ever seen any charges or

1 V. Dinielli - 1/4/17

2 specifications against Ms. Skates for racial
3 slurs?

4 A Have I seen documentation?

5 Q Yes.

6 A Since then I have.

7 Q On this date here?

8 A On this date, no.

9 Q What are "charges and specifications"?

10 A I'm sorry?

11 Q What are "charges and specifications"?

12 A Allegations of misconduct.

13 Q Charges and specifications, why are those
14 important? Why is a charge and specification
15 an important piece of document?

16 MS. PANICO: Objection to form.

17 Q You may answer.

18 A Why are they important?

19 Q Yes.

20 A Because they are important for the reason
21 so that she would know the reasons why she was
22 terminated.

23 Q So what's the typical process when someone
24 is given a charge and specification? What
25 happens thereafter?

1 V. Dinielli - 1/4/17

2 A I don't understand what you're saying.

3 Q What is the policy? What is the procedure
4 that takes place after someone is issued a
5 charges and specification outlining grounds for
6 termination? What happens after they are given
7 those charges and specifications?

8 MS. PANICO: Objection. Calls for
9 speculation.

10 A I don't work in Human Resources. I don't
11 know. Thank God I haven't -- had the --

12 Q As you're standing here today, you have
13 never seen or at this point you hadn't seen
14 charges or specifications against Ms. Skates up
15 until this point, right?

16 A I've heard the charges and allegations.

17 Q But you hadn't seen it, right?

18 A Personally, no.

19 As I said at the very beginning of this, I
20 had very little dealings with Ms. Skates. I'm
21 the manager. I run the facility. I handle the
22 finances. Handle all of that. I don't really
23 get involved in much of the day-to-day
24 operations unless I'm called upon.

25 Q Well, you were the and still are the

1 V. Dinielli - 1/4/17

2 manager and supervisor of the recreation
3 center, right?

4 A That's right.

5 Q If there was a charge and specification
6 alleging or accusing Ms. Skates of offensive
7 racial slurs made to employees and patrons of
8 the recreation center, that would have been
9 something that you would have been directly
10 involved with, right?

11 MS. PANICO: Objection to form. Calls for
12 speculation.

13 Q Isn't that right?

14 A The employees came to me. They told me
15 what their problem was and I forwarded them to
16 Human Resources.

17 Q But you never thought once to take a
18 written statement from any of those employees?

19 A Not my job to do that. That's why we have
20 Human Resources.

21 Q When did they come to you with these
22 concerns? When did these employees come to
23 you?

24 A Throughout her employment.

25 Q So why did you wait until the day that she

1 V. Dinielli - 1/4/17

2 had a work-related injury, the day before you
3 saw her in a sling to make it an issue then?
4 Why did you wait so long?

5 A It was a culmination a lot of events. It
6 had nothing to do with her work related because
7 at the time when the decision was made to
8 terminate her, we were not even aware of
9 work-related injury. Because, as I said, when
10 she left work on the 21st, she did not tell
11 anybody nor did she tell the people she was
12 even working with that she had injured herself.
13 Nobody was aware.

14 Q Why didn't you write Ms. Skates up for
15 harassing patrons of the recreation center?
16 Why didn't you do that?

17 A I advised Human Resources.

18 Q Why didn't you write Ms. Skates up for
19 offensive racial slurs?

20 A I advised Human Resources.

21 Q Who told you that Ms. Skates had offensive
22 racial slurs? What employees told you that?

23 A Vicky Grotton, Anique Adams. Those are
24 the two that I can recall right now.

25 Q What's Vicky Grotton's title?

1 V. Dinielli - 1/4/17

2 A Rec attendant.

3 Q And what's Anique Adams' title?

4 A Cashier.

5 Q Where are they stationed primarily?

6 A Vicky Grotton worked alongside of Earline
7 for much of her employment with us.

8 Q And when did that begin and when did that
9 end?

10 A Pretty much on her first day.

11 Q When did she stop working with Ms. Skates?

12 A As far as I could recall, she always
13 worked a little bit with her. Other than when
14 her days changed, then if Vicky was off a day,
15 then they weren't together. But they did work
16 side by side.

17 Q Did they work together in the exercise
18 room?

19 A No. That's where they split up.

20 Because the patrons were complaining that
21 the ladies were making too much noise. So I
22 said, you know what, let's not let them
23 complain so much. Why don't you girls just
24 split up so that we don't have to listen to the
25 seniors complain about you and we don't want

1 V. Dinielli - 1/4/17

2 them to be making complaints, filing
3 complaints.

4 Q So when Ms. Skates was split up and placed
5 in the exercise room, she no longer had
6 interaction with Vicky Grotton in June?

7 A No. That was only for like an hour of the
8 part of the day.

9 Q How about Anique Adams, where was she
10 stationed?

11 A Anique Adams was stationed as a cashier
12 which is at a desk pretty much to the side in
13 the middle of the lobby where they all
14 congregated and spoke during the course of the
15 day.

16 Q Why would you wait until the day after
17 learning that Ms. Skates had a work-related
18 injury to complain to Human Resources or notify
19 Human Resources about complaints that were made
20 to you as early as June when Ms. Skates was
21 transferred?

22 MS. PANICO: Objection to form.

23 Q You may answer.

24 A I said to you, and you keep switching it
25 around, I did not complain. I did not do it

1 V. Dinielli - 1/4/17

2 the day after hearing. I did not know about
3 the work-related injury until the morning that
4 the termination was scheduled. The termination
5 was scheduled, based on a culmination of all of
6 these issues, for the 22nd of October.

7 Ms. Skates called in in the morning. I
8 alerted Human Resources and the Village
9 attorney that Ms. Skates was not coming to
10 work, so there was no reason for them to come
11 down and terminate her.

12 Q When you say all of the issues, could you
13 be a little bit more specific?

14 A Absence issues, the complaints issues from
15 employees and from the patrons.

16 Q Were those the only issues?

17 A Her attitude. I mean, it was -- she
18 wasn't a pleasant person to work for as I was
19 told by -- she was a cancer in our facility.

20 Q Who told you that?

21 A I believe it was either Vicky Grotton or
22 Anique Adams or -- I don't recall exactly who.
23 But whenever they had a complaint, I said you
24 have to go to Human Resources with your
25 complaint and file them there.

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2 Q So why doesn't this letter here state that
3 Ms. Skates had absence issues, she had poor
4 attitude, she was not pleasant and that she was
5 a cancer in the facility? Why doesn't this
6 letter state that?

7 A I didn't write that letter, so I would not
8 know.

9 Q But you got the letter, right?

10 A I received the letter. And this was based
11 on the employees filing another complaint with
12 Human Resources that they were scared that she
13 was going to come in and go postal. That's why
14 this letter was written.

15 Again, it wasn't me. That's just what I
16 heard.

17 Q So is this letter, again, one of those
18 instances where you just received marching
19 orders and followed through, fall in line?

20 A I guess so. I just received the letter.
21 I didn't write the letter. I didn't hand the
22 letter out. I just received the letter.

23 Q But you fell in line?

24 A I didn't fall in line. When the employees
25 came to me with their fears, I said call Human

1 V. Dinielli - 1/4/17

2 Resources.

3 Q Why didn't you write her up?

4 A She was already terminated.

5 Q Well, why didn't you write her up when
6 they first complained?

7 A Because I couldn't write their complaints
8 up. I sent them to Human Resources.

9 Q Earlier I asked you a question whether or
10 not Ms. Skates had made any medical leave
11 requests directly to you.

12 Do you remember that?

13 A Yes.

14 Q You testified no, right?

15 MS. PANICO: Objection to form.

16 A I understand medical leave requests to be
17 for a period of time going forward. So that is
18 what I answered no. She never said to me I
19 need three weeks off, two weeks off.

20 Q You testified when I asked you whether or
21 not Ms. Skates had -- you had ever denied any
22 leave or medical leave requests from Ms. Skates
23 and you said no.

24 MS. PANICO: Objection to form.

25 A I never did.

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2 Q I also asked you earlier whether or not
3 Ms. Skates ever made a direct request for leave
4 to you that you denied. You said no.

5 MS. PANICO: Objection to form.

6 Q Isn't that right?

7 A I answered those questions to the best my
8 ability.

9 MR. HENRY: At this time I would like to
10 mark for identification Plaintiff's Exhibit 6.

11 (Whereupon, the aforementioned document,
12 was marked as Plaintiff's Exhibit 6 for
13 identification as of this date by the
14 reporter.)

15 BY MR. HENRY:

16 Q Do you see that document there in front of
17 you?

18 MS. PANICO: Could you please give us a
19 second to look at it.

20 A Uhm-uhm.

21 Q Do you see that document there in front of
22 you?

23 MS. PANICO: Just wait one second.

24 MR. HENRY: I think that the witness said,
25 "Uhm-uhm." I don't think she needs your

1 V. Dinielli - 1/4/17

2 approval for --

3 MS. PANICO: I think that the Court said
4 that I have the right to review it, actually
5 before my client does. So I'm trying to cut
6 down --

7 MR. HENRY: Very quickly to see the
8 exhibit and see what it is and move on.

9 MS. PANICO: I have an opportunity to
10 review it before I even give it to my client.

11 MR. HENRY: Let the record reflect now at
12 least two minutes passed that document has been
13 in front of this witness and it's a very basic
14 document.

15 MS. PANICO: I am cutting down on the time
16 by reviewing it with my client. But I do have
17 the right to review it and I will review it.
18 Thank you.

19 MR. HENRY: Let record reflect that the
20 witness already acknowledged that she sees the
21 document.

22 MS. PANICO: But I am not acknowledging
23 that. And you're wasting more time by going on
24 this rant.

25 MR. HENRY: Counsel's characterization

1 V. Dinielli - 1/4/17

2 that it's a rant, again, is harassing.

3 But let the record reflect that this is
4 documents that the defendant produced to us,
5 Bates stamped at 00380, as part of this
6 document product.

7 So I'm not quite sure --

8 MS. PANICO: It wouldn't be something the
9 plaintiff produced because the plaintiff didn't
10 produce any discovery.

11 MR. HENRY: Again, I totally disagree with
12 your characterization. But that's neither here
13 nor there.

14 Again, let the record reflect now at least
15 five minutes has passed that counsel has the
16 same exhibit in front of her and we are now at
17 a standstill because counsel wants to bring out
18 her magnifying glass to inspect document that
19 she produced months ago.

20 MS. PANICO: Please let the record reflect
21 that since Mr. Henry has put down the document,
22 he has not stopped talking so that I have not
23 had an opportunity to actually review the
24 exhibit.

25 MR. HENRY: Record speaks for itself.

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2 MS. PANICO: No, it doesn't. Not with
3 respect to whether or not you've given me an
4 opportunity to review it, it doesn't.

5 MR. HENRY: Time now is 6:09. Counsel has
6 began looking at this document at
7 approximately --

8 MS. PANICO: You're unbelievable. You've
9 given three seconds to look at it.

10 (Counsel speaking simultaneously.)

11 MR. HENRY: -- 6:03 and the time now is
12 6:09. Counsel still has the document in her
13 hand that they produced.

14 MS. PANICO: Mr. Henry has still not given
15 me an opportunity to review it without
16 speaking. I have to listen to you while you're
17 speaking so that I can find out what you're
18 putting on the record. So while you're
19 speaking, I'm not having an opportunity to
20 review it.

21 See how quick it goes when you actually
22 give a chance to look at the document. Is 30
23 seconds too much to ask for?

24 MR. HENRY: Let the record reflect that
25 the time now is 6:10. Counsel has had that

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2 document since, I believe, from my notation,
3 6:03. The witness has now --

4 MS. PANICO: And Mr. Henry continued to
5 speak the entire time I had the document with
6 the exception of the last 30 seconds.

7 (Counsel speaking simultaneously.)

8 MR. HENRY: -- eight minutes after the
9 fact.

10 MS. PANICO: That's not accurate.

11 MR. HENRY: One moment, please.

12 Off the record.

13 (Whereupon, an off-the-record discussion
14 was held.)

15 MR. HENRY: Let the record reflect that
16 I'm on a phone call right now, an important
17 phone call. And as we took the conversation
18 off the record, counsel in the presence of four
19 or at least three other people other than
20 myself told -- stated that I'm the biggest
21 prick that she knows.

22 MS. PANICO: Let the record reflect that
23 Mr. Henry has made misrepresentations
24 throughout this entire deposition.

25 MR. HENRY: Counsel, did you not off the

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2 record call me in the presence of the Court
3 Reporter, who is an officer of the Court, who
4 will, and based upon her role as an officer of
5 the Court, will attest to whatever it is that
6 you said that she heard?

7 Is it your testimony that you didn't call
8 me the biggest prick you know?

9 MS. PANICO: Mr. Henry, I'm not the
10 witness to be deposed here.

11 MR. HENRY: Is that your testimony here?

12 MS. PANICO: Like I said, you made
13 numerous misrepresentations throughout the
14 course of this deposition.

15 (Counsel speaking simultaneously.)

16 MR. HENRY: Well, if you believe that, was
17 that a misrepresentation?

18 Did you call me the biggest prick?

19 MS. PANICO: I'm not required to answer
20 your questions. I'm not the deponent here
21 today.

22 MR. HENRY: Well, at this point, to the
23 extent that the Court Reporter, as an officer
24 of the Court heard it, I would request that the
25 record be noted and that that portion of the

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2 conversation was one that the Court Reporter --
3 in the presence of the Court Reporter was made
4 while off the record when I took an emergency
5 phone call from a family member while I'm in
6 this deposition. If the Court Reporter could
7 note what she heard, that would be great.

8 MS. PANICO: We were off the record for a
9 reason. We were off the record because you
10 needed to take a personal phone call. You made
11 a misrepresentation that I took a personal
12 phone call, which I did not.

13 MR. HENRY: I said the phone rang and it
14 vibrated.

15 MS. PANICO: You made an implication that
16 I took a personal phone call during the
17 deposition, which I did not. Which is a
18 complete misrepresentation of the record as
19 you've been doing throughout this entire
20 deposition and as you continue to do.

21 MR. HENRY: Ms. Panico, you just called
22 me --

23 MS. PANICO: As I stated, I am not the
24 witness. If you want to continue to question
25 the witness, then question the witness. But

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2 I'm not one on trial here.

3 Why don't you proceed with the deposition.

4 MR. HENRY: You just called me the biggest
5 prick in front of everybody in this conference
6 room. Why would you do that?

7 MS. PANICO: Are we going forward with the
8 deposition or not?

9 MR. HENRY: Why would you make personal
10 attacks?

11 MS. PANICO: Because you've been doing it
12 throughout the entire day.

13 MR. HENRY: I never called you a name.

14 MS. PANICO: Mr. Henry, are you ready to
15 go forward?

16 MR. HENRY: Have I ever called you a name?

17 No. I want an apology for you calling me
18 the biggest prick.

19 MS. PANICO: No.

20 MR. HENRY: So you're not going to
21 apologize for calling me that?

22 MS. PANICO: I'm not going to apologize.

23 I'm asking you to please go forward with
24 the deposition.

25 MR. HENRY: I'll be the biggest prick and

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2 I'm very offended behind it. I'm actually
3 quite emotional.

4 MS. PANICO: I bet you are.

5 BY MR. HENRY:

6 Q Do you recognize that document --

7 MS. PANICO: Let the record reflect that
8 Mr. Henry is laughing at this time.

9 MR. HENRY: It's not going to be a
10 laughing matter when I sharpen my pencil.

11 MS. PANICO: Is that a threat, Mr. Henry?

12 MR. HENRY: It is.

13 MS. PANICO: Is that a threat?

14 MR. HENRY: Yes, it is.

15 MS. PANICO: What are you going to do with
16 your sharpened pencil?

17 MR. HENRY: I'm going to sharpen my pencil
18 and I'm going to outline the appropriate motion
19 that I'm going to be filing.

20 MS. PANICO: What are you going to do,
21 Mr. Henry, with a sharpened pencil?

22 (Counsel speaking simultaneously.)

23 MR. HENRY: And you're going to get a few
24 days to respond to it. Don't worry. You'll
25 have enough time to sharpen your pencil as

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2 well.

3 BY MR. HENRY:

4 Q Do you see that document in front of you?

5 A Yes, I do.

6 Q Do you recognize what that document is?

7 A Yes.

8 Q Okay.

9 When I asked you earlier whether or not
10 Ms. Skates had made a request for leave
11 directly to you, you testified no, right?

12 A Yes, I did.

13 Q Do you see this document here where it
14 says: "Village of Freeport"?

15 A Uh-uhm.

16 Q What's the word right under there?

17 A Leave Request Form.

18 Q And who is it from?

19 A Earline Skates.

20 Q Drawing your attention to the upper
21 right-hand section of that document, do you see
22 that too?

23 A Yes, I do.

24 Q Whose name is that?

25 A That's mine.

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2 Q So the testimony that you gave earlier
3 that Ms. Skates hadn't made any leave requests
4 to you was inaccurate, right?

5 A Based on this, you're absolutely right.

6 Q So do you usually give inaccurate
7 testimony, Ms. Dinielli, when you don't review?

8 A First of all, my name it's Dinielli.

9 Q I'm sorry.

10 A Okay. Ms. Dinielli.

11 Q Ms. Dinielli, do you usually give
12 inaccurate testimony?

13 A I'm going to answer the way I answered
14 before. I don't usually, however, this was in
15 the very beginning of her employment and I did
16 not recall it. I can only give -- I'm giving
17 as honest answers as I can based on what I
18 recall for something that happened three and a
19 half years ago.

20 Q Ms. Dinielli --

21 A She is one of 80 employees.

22 Q Well, this is at least the sixth time that
23 you gave inaccurate testimony under oath.

24 MS. PANICO: Objection to form.

25 Q Isn't that right?

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2 A So you say.

3 Q So you didn't think that you would have
4 gotten it right the first time you gave
5 inaccurate testimony under oath?

6 A If I would have remembered signing this,
7 then I would have certainly answered
8 differently.

9 Q So is it your testimony that you give
10 false answers before you know the truth?

11 MS. PANICO: Objection to form.

12 A At the beginning of this testimony, I told
13 you I'm doing the best that I can for something
14 that happened three and a half years ago.

15 Q So now we know that your usual, your
16 default way of responding to questions is to
17 tell a lie first.

18 MS. PANICO: Objection to form.

19 Mr. Henry, let's move on.

20 Q Isn't that right?

21 A I will not answer that question.

22 Q Now, what does it say there under your
23 name, Ms. Dinielli?

24 A Denied.

25 Q So, in fact, you denied a leave request

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2 that Ms. Skates made, right? Isn't that right?

3 A Yes, I did.

4 Q What's the date on this here where it says
5 date received? Do you see that?

6 A May 3rd. That was the day that --
7 May 2nd.

8 Q Okay.

9 So what was the dates that Ms. Skates was
10 requesting?

11 A The 3rd and the 10th, the 4th and the
12 11th.

13 Q So when she made this request on
14 May 1st requesting to have May 3rd and May 10th
15 and May 4th and May 11th off, wouldn't those
16 dates have been in the future dates?

17 A Yes.

18 Q When you testified earlier you hadn't
19 denied any requests for future dates of leave
20 for Ms. Skates, that was inaccurate, right?

21 A I was mistaken.

22 Q Was it a mistake or was it inaccurate
23 testimony under oath?

24 A It was a mistake.

25 MS. PANICO: Objection to form.

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2 Q Was it the truth?

3 MS. PANICO: Objection to form.

4 A I believed it to be the truth when I said
5 it.

6 Q So do you usually say things that you
7 believe to be the truth, but then when you see
8 something that has your name on it that
9 indicates that it's far from the truth, is the
10 case -- is that what you unusually do?

11 MS. PANICO: Objection to form.

12 A Always. I always say things that I
13 believe to be true and I take responsibility
14 when I'm wrong. Always.

15 MS. PANICO: Mr. Henry, move on.

16 Q Were you wrong when you said that you
17 never denied a future request for Ms. Skates?

18 MS. PANICO: It's been asked and answered.

19 Move on.

20 MR. HENRY: Your objection is noted.

21 BY MR. HENRY:

22 Q Were you wrong when you said that? Did
23 you make a mistake when you said that?

24 MS. PANICO: She's already asked and
25 answered that twice.

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2 MR. HENRY: Please allow me to make my
3 record. There's an open question pending. At
4 this point, you're limiting my ability to
5 question this witness. Your objection is
6 noted. I am testing this witness' credibility.

7 Q You may answer.

8 A I was wrong when -- I did not remember
9 denying this request.

10 Q Were you wrong or did you make a mistake?

11 MS. PANICO: Objection. Asked and
12 answered.

13 A Same thing.

14 Q So you made a mistake and you were wrong?

15 MS. PANICO: Objection. Asked and
16 answered.

17 A Yes.

18 Q Did there ever come a time that you may
19 have made a mistake and were wrong and that
20 resulted in some consequence to Ms. Skates that
21 you weren't confronted with?

22 MS. PANICO: Objection to form.

23 A I don't believe so.

24 Q So only for those instances or for those
25 mistakes or for those wrongs that you're

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2 confronted with, that's when you admit it,
3 right?

4 MS. PANICO: Objection to form.

5 A When it's pointed out to me, I take
6 responsibility.

7 Q But when no one is looking, no one is
8 looking, right?

9 MS. PANICO: Objection to form.

10 A I'm sure she's looking and so are you.

11 Q I'm sure there's someone else looking too.

12 A Okay.

13 Q Now that you see that you gave wrong and
14 mistaken testimony inaccurately under oath, can
15 you recall any other times that Ms. Skates made
16 a request for leave directly to you that you
17 denied?

18 MS. PANICO: Objection to form.

19 A If Ms. Skates asked for leave and she did
20 not have time available, I would have signed
21 fast just like I do other people, and I would
22 have denied it. I do not recall every slip
23 that I sign.

24 Q Why didn't you say that to begin with?

25 Why didn't you be honest to begin with?

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2 A I just didn't think of it.

3 MS. PANICO: Objection to form.

4 Mr. Henry, you're harassing the witness.

5 MR. HENRY: I'm testing her credibility.

6 I have every right to ask that question.

7 MS. PANICO: That's not testing somebody's
8 credibility. Obviously you don't know what
9 you're doing then.

10 MR. HENRY: Let the record reflect again
11 counsel's attack on me. I'm not sure why.

12 MS. PANICO: Because you're harassing the
13 witness. You've harassed me throughout the
14 course of the entire time. And it's only
15 because of short discovery deadline that I've
16 remained here. Otherwise, believe me, we would
17 have been gone a long time ago.

18 MR. HENRY: This is why I had asked that I
19 record my own deposition.

20 MS. PANICO: Because you harass witnesses
21 throughout the course. That's exactly right.

22 MR. HENRY: I'm sure --

23 MS. PANICO: If I knew the harassment that
24 my client and I were going to be subjected to
25 throughout the course of this deposition, then

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2 I would have recorded it.

3 MR. HENRY: Well, if we knew -- if we had
4 the benefit of recording it, then we wouldn't
5 have a need for you to feel the way you feel,
6 right?

7 MS. PANICO: Well, only we would be
8 recorded.

9 BY MR. HENRY:

10 Q Again, my question to you was: Now that
11 you know that you gave wrong and inaccurate
12 information pertaining to Ms. Skates' leave
13 requests from you as early as May, is there any
14 other instances where you can think of that you
15 may have made or given mistaken testimony?

16 A No.

17 MS. PANICO: Objection to form. Multiple
18 grounds. Objection to form. Objection. Asked
19 and answered.

20 Q Are there any other mistaken -- any other
21 instances where you were mistaken or gave
22 inaccurate testimony?

23 A I don't believe I did, however, if she
24 didn't have time available, I would have signed
25 it fast and I would have -- and it would have

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2 been the same for everybody else. So it has
3 nothing to do with -- if she has no time, she
4 can't get paid. And that would not be my
5 decision. It would just be you don't have the
6 time.

7 MR. HENRY: At this time I would like to
8 mark for identification Plaintiff's Exhibit 8.

9 (Whereupon, the aforementioned document,
10 was marked as Plaintiff's Exhibit 8 for
11 identification as of this date by the
12 reporter.)

13 MR. HENRY: Let the record reflect that
14 the exhibit was provided to the witness minutes
15 ago. Counsel, again, in light --

16 MS. PANICO: Why are you misrepresenting?
17 I didn't have it for minutes.

18 (Counsel speaking simultaneously.)

19 MR. HENRY: The way she has been holding
20 on to the exhibit outside of the purview of the
21 this witness. She knows that we are limited
22 time.

23 The time now is 6:20 and counsel has not
24 provided the exhibit to the witness and I'm
25 unable to test this witness' knowledge on it.

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2 And, again, these are documents that were
3 provided to us by counsel.

4 MS. PANICO: Please allow the record to
5 reflect that I had the document for all of five
6 seconds before Mr. Henry began speaking.

7 Please also allow the record to reflect
8 that Mr. Henry has not provided me as counsel
9 with a copy of any of the exhibits. So,
10 unfortunately, because of Mr. Henry's error, I
11 have to review the -- my client's exhibit
12 before I can pass it off to her. It's
13 unfortunate that Mr. Henry didn't provide or
14 prepare for the deposition. But,
15 unfortunately, that's what we're left with.

16 MR. HENRY: Let the record reflect that
17 counsel confirmed for the first time this
18 deposition that we noticed back in September
19 yesterday, January 3rd at 6:03 p.m. When I
20 sent her an e-mail and the e-mail states that
21 Ms. Panico, I attempted to reach you to confirm
22 Ms. Dinielli's deposition for tomorrow at
23 12:30, however was advised that you were out of
24 the office and was unable to leave -- and I was
25 unable to leave you a voice mail to confirm

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2 Ms. Dinielli's deposition will begin on or
3 about 12:30 at our North Baldwin office and
4 should last throughout the afternoon. We will
5 see you then.

6 That e-mail was sent to counsel yesterday
7 at 4:39 p.m. Counsel only responded two hours
8 later with confirmation that Ms. Dinielli and
9 herself would be here. And then today she
10 called in our office and said that she was
11 running late and wasn't sure what time she
12 would get here, it may be or may not be, as
13 reported to me by my assistant, approximately
14 12:45. Counsel didn't actually get here until
15 nearly a little past 1:00 and then we had the
16 issues that unfolded.

17 So please forgive me if in our hasted
18 moving forward with this deposition, which you
19 only confirmed less than 24 hours ago, that I
20 don't have copies, courtesy copies, that are
21 our Court Reporter so graciously exhibited for
22 us during the time it took for to you get here
23 as she was waiting since 12:20.

24 MS. PANICO: Let the record reflect that I
25 myself have evidence that the deposition was

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2 actually confirmed on January 30th through
3 e-mail correspondence and from telephone
4 conversations with Mr. Henry.

5 MR. HENRY: January 30 hasn't happened
6 yet.

7 MS. PANICO: I apologize.

8 MR. HENRY: I just read an e-mail that I
9 just sent that I'm actually going to now print
10 out and have it attached to this as --

11 You can actually begin with letter
12 exhibits as Plaintiff's letter Exhibit A.

13 MS. PANICO: I apologize. Mr. Henry is
14 correct. The deposition was confirmed by me
15 through e-mail and telephone conversations on
16 December 30th --

17 MR. HENRY: That's not accurate.

18 MS. PANICO: -- prior to today. I have
19 e-mails to confirm it.

20 MR. HENRY: The e-mail here, as I just
21 read into the record, that yesterday at --

22 MS. PANICO: Just because you sent a
23 second e-mail doesn't mean it wasn't confirmed
24 on December 30th.

25 MR. HENRY: Well, again, the record will

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2 speak for itself. My apologies if -- within
3 the 15 minutes that it took you to get here or
4 20, 30 minutes late that you got here --

5 MS. PANICO: I was 15 minutes late and
6 made a courtesy call to your office to let you
7 know that I was running late.

8 (Counsel speaking simultaneously.)

9 MR. HENRY: We'll pull the surveillance
10 camera.

11 MS. PANICO: Good. I hope you do. Spend
12 more time on this case.

13 BY MR. HENRY:

14 Q Do you recognize that document there in
15 front of you?

16 A Yes, I do.

17 Q Whose signature is that there where it
18 says "Department"?

19 A Me.

20 Q So when you testified earlier that you
21 didn't have any or receive any leave requests
22 for Ms. Skates, now this is the second time
23 that you're presented with documents that
24 indicate otherwise, right?

25 A When you said leave requests from her, I

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2 mean this is filled out and just handed to me
3 about somebody else in my office.

4 Q Does it say Leave Request Form?

5 A Yes.

6 Q Okay.

7 A All right.

8 MS. PANICO: I think the problem is with
9 the way you're defining leave.

10 THE WITNESS: Yes.

11 MR. HENRY: Again, let the record reflect
12 counsel's insistence -- I don't even know if
13 that was an objection. I don't know what that
14 was. I have an open question pending and
15 counsel just decided to put her opinion on the
16 record.

17 MS. PANICO: You're creating -- I will --
18 maybe I should have prefaced it with the word
19 objection. But the bottom line --

20 MR. HENRY: Well, you should have. The
21 Court warned you.

22 MS. PANICO: -- is that you're asking
23 questions that are unclear and that are
24 confusing and intentionally trying to make --

25 MR. HENRY: Your objection is noted.

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2 MS. PANICO: -- intentionally confusing
3 the witness.

4 MR. HENRY: No kidding.

5 BY MR. HENRY:

6 Q That's your signature, right?

7 A That is.

8 Q So you were inaccurate at least two times.

9 A I misunderstood your questions, to be
10 totally honest.

11 Q So that is the excuse for giving
12 inaccurate or wrong testimony, right?

13 MS. PANICO: Objection.

14 A It's not an excuse. It's the reason why I
15 was answering the questions the way I was
16 answering.

17 MS. PANICO: You're harassing the witness.

18 A And this is approved.

19 Q What's the date on that approval?

20 A 6/4.

21 Q You made that approval, right?

22 A Yes, I did.

23 Q Drawing your attention to previously
24 marked Exhibit 1, do you see that? Withdrawn.

25 You testified earlier that you received

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2 complaints from members of your staff
3 pertaining to Ms. Skates; isn't that right?

4 A Uhm-uhm.

5 Q You also testified that those complaints
6 were from, I believe the names you provided was
7 Vicky Grotton and Anique Adams.

8 A Yes.

9 Q And that those complaints were that
10 Ms. Skates had used racial slurs, right?

11 A Uhm-uhm.

12 Q You also testified that those complaints
13 began as early as Ms. Skates being transferred
14 to the exercise room, right?

15 A No.

16 Q When did those complaints begin?

17 A I don't recall when the complaints began.

18 Q Well, you testified that the complaints
19 were -- the complaints were made prompting you
20 to transfer Ms. Skates for her own protection?

21 MS. PANICO: Objection to form.

22 A No. That is not what I said.

23 Q You testified that you separated
24 Ms. Skates from --

25 A For one hour of the day. That's not --

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2 she wasn't transferred to the fitness center
3 for the whole period.

4 Q But that was in June, right? Right around
5 the time that she was transferred.

6 A Whatever the date was. I'm getting
7 confused now. Whatever that date was.

8 Q So you separated Ms. Skates from Vicky
9 Grotton and Anique Adams, right?

10 A No.

11 MS. PANICO: Objection to form.

12 A At that time, when the senior room was
13 being cleaned, which took about one hour, they
14 separated. Then they came back together and
15 they went to the next duty.

16 Q With respect to the complaints that you
17 received from Vicky Grotton and Anique Adams,
18 did you ever meet with Ms. Skates in June of
19 2013 to talk to her about those complaints?

20 A No, I didn't.

21 Q Why didn't you meet with her then to talk
22 to her?

23 A Because I didn't hear any racial slurs.

24 Q Did you hear any complaints at all in
25 June?

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2 A No. I don't believe I did in June. I
3 believe that they started coming towards the
4 end when they didn't know what to do about it
5 anymore.

6 Q Now, with respect to the issues that you
7 claimed that Ms. Skates had with patrons and
8 seniors, that happened in early June, right?

9 A Uhm-uhm.

10 Q Did you ever meet with Ms. Skates and say
11 that the patrons and the -- patrons are
12 complaining about you?

13 A Yes, I did. That's when I separated the
14 two of them because she was heard calling one
15 of the patrons, the seniors, a Jew bastard. So
16 didn't want that patron to put a formal
17 complaint in. So that's why I said to her, why
18 don't you just go up for the hour, you go up to
19 the fitness center and leave Vicky down here by
20 herself.

21 Q Why didn't you write Ms. Skates up in
22 June?

23 A Because I didn't hear that. I was looking
24 out for her.

25 Q Were you looking out for her when you

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2 wrote her up when she walked away from you?

3 A No, I didn't.

4 Q Well, why would you look -- why would you
5 look out for her patron if she called a patron
6 in the facility that you're --

7 A Because I know the patrons can be a little
8 difficult. I don't believe what they were
9 doing was -- I mean, they were just talking
10 amongst themselves and the women were trying to
11 play mahjong.

12 Q Well, don't you think the word Jew bastard
13 is a racial slur?

14 A I didn't hear her say it. So I don't even
15 know if it really happened. That is what they
16 told me. I just -- I was not there for it.

17 Q So in the same way that you didn't hear
18 the racial slurs that she allegedly made to
19 Vicky Groten or Anique Adams, the same way you
20 didn't hear that --

21 A And that's why I didn't write any of them
22 up. I said the person who heard it should make
23 the complaint. I did not hear any -- her say
24 that.

25 MR. HENRY: At this time I would like to

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2 mark for identification Plaintiff's 25.

3 (Whereupon, the aforementioned document,
4 was marked as Plaintiff's Exhibit 25 for
5 identification as of this date by the
6 reporter.)

7 MR. HENRY: Let the record reflect that
8 I've placed the document in front of the
9 witness --

10 MS. PANICO: I'm timing it.

11 MR. HENRY: -- on the table. Counsel
12 picked it up from the table and is holding it
13 outside of the purview the witness. And,
14 again, this has been in kind with what she has
15 been doing the entire deposition in terms of
16 taking exhibits, holding them outside of the
17 view of the witness, reviewing them for
18 extended periods, and I guess limiting my
19 ability to test this witness' knowledge,
20 limiting my ability to ask questions in the
21 spur of the moment and what I believe to be an
22 attempt to delay and run the clock because she
23 knows that discovery is closing in two days.
24 Again, I've noted my objection numerous
25 times. These are documents that have been

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2 produced by the defendant to us. She has --
3 counsel has been in possession of these
4 documents as early as the initial disclosure
5 period, which, I believe, was earlier this
6 year. And for her to take the time that she's
7 taking to review documents as I'm in the middle
8 of a deposition, to me, is just unheard of.

9 At this point only 15 seconds has passed
10 in my objection and counsel certainly can
11 continue from that.

12 MS. PANICO: I started this after you were
13 about two minutes in. So if you're looking at
14 this, this is not accurate.

15 MR. HENRY: Again, let the record reflect
16 counsel is holding up what appears to be an
17 iPhone, looks as though she may have
18 triggered -- I don't know -- I can't tell from
19 where I'm at, but she may be recording this
20 deposition. And I know earlier we had -- she
21 raised the very issue about recording. But
22 again, I don't know. I can't see. But I have
23 iPhone and it looks like she's activated the
24 recording button, although she raised the huge
25 issue and terminated the deposition earlier

1 V. Dinielli - 1/4/17

2 because she had concerns with me recording.

3 So I just wanted the record to be clear.

4 Counsel, again, there's is an open
5 question. You have the exhibit. The witness
6 hasn't looked at it yet and you're affecting my
7 ability to move forward.

8 MS. PANICO: So Mr. Henry has now gone on
9 a rant for about three minutes where during
10 that time period he has provided me absolutely
11 no opportunity to review the document that he
12 gave to my client.

13 Again, the Court did indicate during a
14 prior telephone conference with the Court that
15 I do have the right to review the document, not
16 only while my client is reviewing it but that I
17 actually have the right to review the document
18 before it goes to my client.

19 I'm just asking --

20 MR. HENRY: That's not what the Court
21 said.

22 MS. PANICO: -- for the opportunity to
23 review the document as the Court indicated that
24 I am allowed to do.

25 Mr. Henry who so concerned about the time,

1 V. Dinielli - 1/4/17

2 has wasted several minutes going on a rant
3 about this issue and indicating that I'm
4 recording this, which is entirely false. I am
5 not technologically savvy. I have no idea how
6 to even record on my telephone. So his
7 misrepresentation in that regard is, again,
8 harassment and is entirely baseless and
9 unsupported. He has nothing to substantiate it
10 and no reason to believe whatsoever that I'm
11 recording this.

12 I do, in fact, have the stopwatch going
13 and that is only because Mr. Henry has made
14 numerous misrepresentations over and over again
15 indicating that I've had the document for five
16 minutes when I haven't even had it for ten
17 seconds. I have the stopwatch going so that
18 way I know exactly how long has gone by.

19 I'll now take the opportunity to review
20 the exhibit which has not been given to me yet.

21 MR. HENRY: The exhibit was given to you.
22 It was placed on the table before you picked it
23 up.

24 MS. PANICO: But you wouldn't stop talking
25 to give me the opportunity to look at it.

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2 MR. HENRY: You have no reason at all to
3 review it.

4 MS. PANICO: Oh, really. You know what,
5 then I'll give you the same exact courtesy on
6 Friday when I see your client. See how you
7 feel about it then.

8 MR. HENRY: We have nothing to hide.

9 MS. PANICO: You think I'm trying to hide
10 something by reviewing a document?

11 MR. HENRY: You called me a prick for no
12 reason.

13 MS. PANICO: Okay, Mr. Henry.

14 MR. HENRY: And then lied about it.

15 MS. SKATES: May I ask a question?

16 MR. HENRY: Again, now it's three minutes
17 that's passed and the witness still does not
18 have the exhibit.

19 MS. PANICO: Again, that's a
20 misrepresentation on the time.

21 MR. HENRY: The Court was very clear that
22 you -- note.

23 MS. PANICO: Mr. Henry, if you would just
24 stop talking, then I can review the document.

25 MR. HENRY: Let record reflect that

1 V. Dinielli - 1/4/17

2 Ms. Panico has raised her voice --

3 MS. PANICO: Oh, my God.

4 MR. HENRY: -- and flailed her arms.

5 MS. PANICO: That's, again -- I never
6 flailed my arms. Thank you.

7 MR. HENRY: Have you finished your review?

8 MS. PANICO: Mr. Henry, you know I don't
9 have the document in front of me. So I feel
10 like you're chastising me by asking me that
11 question.

12 MR. HENRY: Let the record reflect that
13 counsel had not notified me when she finished
14 her review. I've been sitting here waiting.

15 MS. PANICO: Let the record reflect that
16 Ms. Dinielli had the document a minute or so
17 ago --

18 MR. HENRY: Did you tell me that?

19 MS. PANICO: -- and Mr. Henry was looking
20 down at his notes.

21 MR. HENRY: Did you tell me that?

22 MS. PANICO: I don't have no obligation to
23 tell you I'm done reviewing the document. I
24 passed the document to Ms. Dinielli.

25 MR. HENRY: And when you take five minutes

1 V. Dinielli - 1/4/17

2 to review a single-page document, I think that
3 you should at least tell me when you're done
4 reviewing it.

5 MS. PANICO: I didn't take five minutes to
6 review it. So maybe that's the
7 misunderstanding. I took 30 seconds to review
8 it after you finally stopped talking.

9 BY MR. HENRY:

10 Q Ms. Dinielli, do you see that document
11 there in front you?

12 A Yes.

13 Q What do you recognize that document to be?

14 A It was a letter that -- to Conor Kiran,
15 Director of Human Resources, from me on June 27
16 outlining Ms. Skates' work schedule or days
17 that she had not come to work or had time off,
18 I should say.

19 Q What's the date of that letter?

20 A June 27, 2013.

21 Q Do you see here where it says Earline
22 Skates first day of work was 4/2/2013?

23 A Yes.

24 Q Do you also see she was disciplined in a
25 memo dated April 17, 2013 for an incident that

1 V. Dinielli - 1/4/17

2 took place in your office on 4/16?

3 A Yes.

4 Q Was that the incident where you claim
5 Ms. Skates disrespected you?

6 A Yes.

7 Q Do you also see here these are the dates
8 she did not report to work and the category
9 from which she is paid?

10 A Yes.

11 Q Do you see that it runs through a list of
12 dates beginning in April 2013 and ending in or
13 about June 20th of 2013 beginning with the
14 first date April 3, 2013 to the last date?

15 A I believe it goes to June 27th, but...

16 Q Well, it says here these are the dates she
17 did not report to work and the category from
18 which she was paid.

19 Do you see that?

20 A But then there's the days that she didn't
21 come to work that she wasn't paid.

22 Q The very least -- at the earliest this
23 reflects dates from as early of April 3, 2013
24 and as late as June 27, 2013?

25 A Yes.

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2 Q You also see at the become where it says
3 June 19th you received an e-mail with a
4 doctor's note stating when she would be able to
5 return to work?

6 A Yes.

7 Q Do you see that?

8 A Uhm-uhm.

9 Q Did you author this correspondence, this
10 interoffice correspondence?

11 A Did I what?

12 Q Did you author it?

13 A Did I author it?

14 Q Author. Did you write this?

15 A Yes.

16 Q Why is it that in this -- well, withdrawn.
17 Would you say that this was a fair
18 characterization of the events involving
19 Ms. Skates up and until and including June 27,
20 2013?

21 A I believe so, yes. I believe so.

22 Q Was there any reason you failed to put in
23 here that Ms. Skates had called the patron a
24 Jew bastard?

25 A That wasn't what I was asked to provide at

1 V. Dinielli - 1/4/17

2 that time. This is probably because Human
3 Resources does payroll and they probably were
4 asking what her time off was.

5 Q Well, when you wrote that she was
6 disciplined in a memo dated for an incident
7 that took place on April 16th, that has nothing
8 to do with payroll, does it?

9 A No.

10 Q So, in fact, this memo contains instances
11 where Ms. Skates was alleged to have been
12 disciplined.

13 A And the reason why I probably didn't
14 mention that was because that was just hearsay
15 and, again, I was not there.

16 Q Well, is there any reason why you didn't
17 even notate that you've received numerous
18 complaints from patrons and employees alike
19 regarding Ms. Skates?

20 MS. PANICO: Objection to form.

21 A No.

22 MS. PANICO: In that particular document?

23 A Because anybody who had a complaint, I
24 told them they have to bring their complaint
25 either to the union or to Human Resources.

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2 Q But you failed to in the summarized --
3 what you testified is a fair summary, an
4 accurate summary of Ms. Skates' employee status
5 up until June 27th, you failed to put facts in
6 here that you now are stating on the record,
7 right?

8 A I put facts here at the time on
9 June 27th of facts that I believed to be
10 important at the time.

11 Q Well, you didn't think it's important that
12 if Ms. Skates was disciplined for waving her
13 finger and walking out of your office that it
14 wasn't important to put in here that she called
15 someone a Jew bastard?

16 MS. PANICO: Objection to form.

17 A No. Because I was not there.

18 Q You didn't think it was important to put
19 that you received complaints from employees and
20 from different and various patrons about
21 Ms. Skates' behavior and conduct?

22 MS. PANICO: Objection to form.

23 Q That wasn't important?

24 A I handled things the way I thought they
25 were appropriate to handle.

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2 Q So, once again --

3 A I was not going to write Ms. Skates up for
4 an instance that I did not witness. If
5 somebody else wanted to follow through with
6 those complaints, it was their duty to report
7 them to the proper department or individual.

8 I believe the Jew bastard remark, she
9 denied and I gave her the benefit of the doubt
10 at the time. This is why I moved her from that
11 area so that she would have no problems going
12 forward.

13 Q In light of time, I'm trying to skip
14 through certain portions of my outline so that
15 I can try to get you out as soon as possible.

16 Do you have any objections to that?

17 A No.

18 Q You testified earlier when I asked you
19 whether or not it was typical for employees to
20 be given access to parking in the back of
21 building.

22 Do you remember that?

23 A Uhm-uhm.

24 Q You testified that, no, employees were not
25 allowed to park in the back of the building

1 V. Dinielli - 1/4/17

2 unless they were closing the building, right?

3 What was the other reason why you said.

4 A I said -- first, I didn't say they weren't
5 allowed. I said the people that had passes to
6 the back and that parked in the back were the
7 individuals that opened the building, closed
8 the building, the mechanical -- the man that
9 runs the mechanics of the building, the girl
10 that does the bank run daily, myself. Those
11 are the ones that I recall.

12 Q You testified earlier that they don't even
13 make those parking key cards anymore, that
14 there were only about five.

15 A I didn't say five. I said there's about
16 five spots back there. I don't know how many
17 were -- the company that issues them is no
18 longer or we don't have -- the Village doesn't
19 have contract with them any longer. So we
20 cannot make additional passes. We recycle the
21 ones that we have. In my tenure, I have never
22 issued a pass.

23 Q So your testimony here today is that
24 you've never issued a pass during your tenure?

25 A Yep.

1 V. Dinielli - 1/4/17

2 Q But in or around May of 2013, Ms. Skates
3 had disrespected you, right?

4 MS. PANICO: Objection to form.

5 Q Isn't that right?

6 A That's what you said.

7 Q And that you also did not issue pass or
8 limit anyone's ability to park in the back,
9 right, besides Ms. Skates.

10 Isn't that right?

11 MS. PANICO: Objection to form.

12 A I don't understand.

13 Q Was there anyone else other than
14 Ms. Skates that was prevented from parking in
15 the back?

16 A Yes. There are 22 full-time employees at
17 the time.

18 Q How many of those employees were not
19 allowed to park in the back?

20 A I would say -- I would say more than half
21 of them didn't have access. Some of them
22 worked nights. Some of them worked days. So
23 they would probably be more than five people.
24 However, there wouldn't be five people there at
25 the same time.

1 V. Dinielli - 1/4/17

2 Q So prior to a decision being made that
3 Ms. Skates could no longer park in the back --

4 A She never parked in the back.

5 Q It's your testimony here today that
6 Ms. Skates, as a recreation center staff
7 member, never parked in the back?

8 MS. PANICO: Objection. Asked and
9 answered.

10 A I'm not aware of any time that she had the
11 ability to park in the back. If she did, it
12 was not to my knowledge.

13 Q Was Ms. Skates ever tasked with opening or
14 closing the building?

15 A I don't believe so, no. She never had
16 keys to have -- for the facility.

17 Q Were you familiar -- during the time of
18 2013, were you familiar with the agreement by
19 and between the Village of Freeport and CSEA
20 Local 1000 AFSCME? Were you familiar with that
21 agreement?

22 A The union for -- agreement, yes.

23 Q And what was the most current -- during
24 that time, what would have been the most
25 current agreement in play?

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2 A I don't remember.

3 Q How frequent is the agreement changed?

4 A I think there's a contract -- I don't
5 know. I'm not sure. It's not annually though.
6 I'm not sure. I don't want to say --

7 Q Well, do you remember --

8 A -- because I'm in the union. So I don't
9 really --

10 Q Was Ms. Skates in the union?

11 A I don't know.

12 Q Well, you said --

13 A I assume so.

14 Q You said you met with Ms. Skates and the
15 union rep.

16 A I assume she was in the union although --
17 I don't know. That's a Human Resources issue.
18 I don't know.

19 Q Well, why would you meet with
20 Ms. Skates --

21 A She had union representation. So I assume
22 she was in the union.

23 Q Well, does the union usually represent
24 people that are not a part of it?

25 A I believed everybody was in the union.

1 V. Dinielli - 1/4/17

2 But, again, I'm not quite sure about that.

3 Q Do you have any reason now to believe that
4 Ms. Skates was not a part of the union?

5 A No. That's -- I'm -- I don't have any
6 reason to ask or need to know that information.

7 Q But at the very least, you knew the union
8 agreement, right?

9 A I referred to the union agreement, yes.

10 Q The union agreement was provided to you to
11 address a variety of different issues affecting
12 a union member.

13 Isn't that right?

14 A No.

15 Q So it's your testimony here today that the
16 union agreement doesn't provide guidance with
17 dealing with union-related issues?

18 A It is. But that's not why I had it. I
19 had it because I asked for a copy for my own --
20 anytime there was an issue, I sent people to
21 Human Resources.

22 Q You testified earlier that you were
23 familiar with the compensatory time, right?

24 MS. PANICO: Objection to form.

25 Q Did you not testify earlier that you were

1 V. Dinielli - 1/4/17

2 aware of comp time?

3 A What do you mean?

4 Q What comp time was and accumulated time.

5 A What comp time was, yes.

6 Q Where would you have found the definition
7 for comp time?

8 A That would be in the union book.

9 Q You would rely on the union book for
10 guidance on?

11 A If I was looking for information, yes.

12 Q You also testified that you were familiar
13 with the sick leave policy.

14 A I don't remember saying.

15 Q Were you familiar -- are you familiar with
16 the sick leave policy?

17 A As far as what?

18 Q As far as a leave request, leave sick
19 time?

20 A Yes. Yes.

21 Q Where would you have found that? Where
22 would you have obtained that knowledge?

23 A From Human Resources.

24 Q How about the union agreement?

25 A Union agreement. How many days people are

1 V. Dinielli - 1/4/17

2 entitled to, when those days go into effect,
3 yes.

4 Q So would you defer to the union agreement
5 when you had a question pertaining to time that
6 an employee would be entitled to?

7 A No.

8 Q Well, what else would you look at? What
9 other source?

10 A I had a girl that handled that for me and
11 she would have the cards and she kept the cards
12 and she would give me the information. And
13 she's been working there for many years and
14 she's very familiar.

15 Q Is there any source or were there any
16 source of policy that pertained to the sick
17 leave, Freeport sick leave practice and policy
18 or was it only contained in the union
19 agreement?

20 A Well, the Village adhered to the union
21 agreement. Everybody was -- worked under the
22 whatever the union agreement was for benefits,
23 sick time, personal time, everybody was -- fell
24 under that umbrella.

25 Q Did there ever come an instance where

1 V. Dinielli - 1/4/17

2 or -- withdrawn.

3 So as far as your understanding of the
4 union agreement is concerned and the sick leave
5 portion, was there any limitations on your
6 ability to take action against an employee out
7 on sick leave during the time that they are out
8 on sick leave?

9 MS. PANICO: Objection to form.

10 A I would have -- I don't know.

11 MS. PANICO: Do you understand the
12 question?

13 THE WITNESS: I don't understand the
14 question really.

15 BY MR. HENRY:

16 Q How many consecutive days of sick leave is
17 an employee entitled to before any action can
18 be taken against that employee?

19 A I don't know. If there was an issue, I
20 would have called Human Resources.

21 Q Did you ever look at the union manual?

22 A I've looked at it, yes.

23 Q You testified earlier when I asked you
24 pertaining to Ms. Skates when you threatened
25 that she would be terminated for failure --

1 V. Dinielli - 1/4/17

2 A I never threatened.

3 Q You testified earlier that Ms. Skates was
4 given a certain day to return to work because
5 she failed to notify or however you
6 characterized it.

7 Do you recall that?

8 A Uhm-uhm.

9 Q The testimony also indicated that
10 Ms. Skates had been out for at least two
11 consecutive days?

12 A Uhm-uhm.

13 Q But you had issued her a letter advising
14 her that she would be terminated during those
15 consecutive day periods --

16 MS. PANICO: Objection to form.

17 Q -- right?

18 A No.

19 MS. PANICO: Mischaracterization of
20 testimony.

21 MR. HENRY: At this time I would like to
22 mark for identification Plaintiff's 36.

23 (Whereupon, the aforementioned document,
24 was marked as Plaintiffs' Exhibit 36 for
25 identification as of this date by the

1 V. Dinielli - 1/4/17

2 reporter.)

3 MR. HENRY: Marked for identification

4 Plaintiff's Exhibit 36.

5 BY MR. HENRY:

6 Q Just take a moment to take a look at the
7 document. I just want to make sure your lawyer
8 has an opportunity to look at it.

9 MS. PANICO: He just wants to make a phone
10 call.

11 BY MR. HENRY:

12 Q Have you had an opportunity to take a look
13 at that document?

14 A I've seen it before, yes.

15 Q Do you recognize that document?

16 A Yes, I do.

17 Q What do you recognize that document to be?

18 A This is the books of the Village of
19 Freeport CSEA union agreement.

20 Q Now, drawing your attention to Page 15 of
21 that document, do you see that?

22 A Yes.

23 Q Now, would you say that this section here,
24 Section 19, where it says "sick leave," that
25 that section accurately reflects the section

1 V. Dinielli - 1/4/17

2 that was in play --

3 A Yes.

4 Q -- during the time that --

5 A Yes.

6 Q -- Ms. Skates --

7 A Yes.

8 Q -- worked for Freeport?

9 A Yes.

10 Q One moment.

11 Drawing your attention to the first page
12 of that document there, where it says March 1,
13 2004 to February 20, 2010, would this have been
14 the same agreement?

15 A Yes. The context would be the same.

16 Q But this is not the actual --

17 A I think it is. I don't know that they
18 came out with another one.

19 Like I said, I don't -- I had a copy of my
20 own in my office. I don't have it anymore.
21 Somebody took it and I'm not sure even where it
22 went, so...

23 MR. HENRY: Ms. Panico, you produced this
24 document to us. Is this the latest -- would
25 this have been the version that would be in

1 V. Dinielli - 1/4/17

2 place during the year 2013 when Ms. Skates was
3 working there?

4 MS. PANICO: I would have to look back. I
5 believe that that is the one that was in play.
6 There may have been separate memorandum of
7 agreements that were also attached and annexed
8 thereto which generally deal with increases in
9 pay, et cetera.

10 But, generally, what happens is after a
11 CBA expires, the CBA remains in place with
12 memorandums of agreement annexed thereto until
13 a new CBA replaces it. I'm not aware of a new
14 CBA replacing this one.

15 BY MR. HENRY:

16 Q So drawing your attention to where it says
17 sick leave on Page 15, do you see that?

18 A Yes.

19 Q Would you say, now that we've had an
20 opportunity to review this document, that this
21 sick leave section would have accurately or
22 closely reflected what was in play during the
23 year of 2013?

24 A Yes.

25 Q Were you familiar with this policy?

1 V. Dinielli - 1/4/17

2 A I was familiar with the policy but not
3 really on the details. Because, like I said,
4 it really didn't come up that often. I had an
5 employee who handled this for me. And if had I
6 had questions, I called Human Resources.

7 Q So during the instances where you denied
8 Ms. Skates sick leave requests, did you look at
9 this manual at all?

10 A No, I didn't.

11 Q So you failed to look at a policy that
12 provided you with direction as to whether or
13 how to approve or deny sick leave?

14 A I called Human Resources and they directed
15 me.

16 Q So is it your testimony here today that
17 every time you denied Ms. Skates sick leave
18 request you done so after you called Human
19 Resources?

20 A Yes, I did.

21 Q And who did you call in Human Resources?

22 A Conor Kiran.

23 Q So not once did you review this policy
24 whatsoever to ensure whether or not the
25 direction that was given to you by Conor Kiran

1 V. Dinielli - 1/4/17

2 sometimes, which you disagreed, with whether or
3 not that direction was accurate?

4 A Well, I didn't have to. When I denied
5 her, she had no time available. So, therefore,
6 I denied the time. If I had a question as to
7 my -- if my interpretation was correct, then I
8 called Human Resources to find out what the
9 correct interpretation was because I most
10 certainly did not want to go against any union
11 benefit.

12 Q Drawing your attention to Page 17 of that
13 document where it says personal leave, do you
14 see that section there?

15 A Yes, I do.

16 Q Would you say that this section also
17 accurately reflects the section that was in
18 place in the year of 2013?

19 A Yes.

20 Q Did you ever review the section here
21 before you approved or denied any of
22 Ms. Skates' personal leave requests?

23 A The only time I denied her personal -- her
24 leave request was when she didn't have time
25 available.

1 V. Dinielli - 1/4/17

2 Q Did you review this document before you
3 did so to verify whether or not you had the
4 ability?

5 A Possibly. But, like I said, I always
6 checked with Human Resources to make sure that
7 my interpretation was correct.

8 Q Drawing your attention to Subpart B of
9 Section 21, do you see that?

10 A Yes.

11 Q Drawing your attention to where it begins
12 with "In the event," do you see that? It's the
13 second sentence. Do you see that?

14 A On B?

15 Q Yes.

16 A That's the third sentence, the third line.
17 All right, "in the event," right?

18 Q Do you see that?

19 A Yep.

20 Q Can you go ahead and read until you get to
21 a period?

22 A "In the event of an emergency, an employee
23 may be permitted to take a personal day without
24 the requisite two business day notice provided
25 the employee calls in to the supervisor or

1 V. Dinielli - 1/4/17

2 manager and requests the day prior to the start
3 of the employee scheduled work day and provided
4 the employee provides written proof upon return
5 to work and within 24 hours of the personal day
6 satisfactory to the department head and the
7 said emergency."

8 Q In the year 2013, you were Ms. Skates
9 supervisor or manager, right?

10 A Yes, I was.

11 Q You testified that there was a time that
12 she didn't come to work because of an
13 emergency, in fact, the hospitalization that
14 she called you, right?

15 A No. I never said that.

16 Q You learned that she was in the hospital,
17 right?

18 A After she didn't come to work for two
19 weeks.

20 Q Well, there was at least two days that had
21 passed that you had learned that Ms. Skates was
22 in the hospital; isn't that right?

23 A I don't recall knowing that. Maybe I did.
24 Maybe I didn't.

25 Q But doesn't it state here in the policy

1 V. Dinielli - 1/4/17

2 that in the event of an emergency an employee
3 may be --

4 A She always got paid for days -- when those
5 days -- when she had time available. I never
6 denied time available when she had time
7 accrued.

8 Q But it says here that in the event of an
9 emergency, she's permitted to take that day.

10 A If she has it available. If it's accrued.
11 If there's no time accrued, then she cannot
12 take the time.

13 Q Where does it say here, Ms. Dinielli, that
14 there's a requirement for time accrued?

15 A That's probably why I called Human
16 Resources. It's a matter of interpretation.

17 Q But it doesn't say here the accrued time,
18 right?

19 A That's probably why I called Human
20 Resources.

21 Q But the fact --

22 A Because she had no time and what am I to
23 do. How will the Village pay her. That is
24 what I did.

25 Q Well, how about read the agreement and see

1 V. Dinielli - 1/4/17

2 what it says?

3 A It's a very it -- doesn't say like you
4 said what you're supposed to do if somebody
5 doesn't have time available.

6 Q Well, do you disagree with the people that
7 drafted this agreement? Do you disagree with
8 it? Is this one of those things that you
9 disagree with?

10 MS. PANICO: Objection to form.

11 A I don't agree or disagree. If I don't
12 understand it, I call for verification.

13 Q But the agreement, as it stands in front
14 of you, doesn't say anything about accrued
15 time, does it?

16 MS. PANICO: Objection to form.

17 A She called most mornings in the morning
18 and she was never denied because she called
19 late.

20 Q Can you answer my question, please?

21 Is there anything in Subpart B of
22 Section 21 under personal leave that mentions
23 anything about accrued time?

24 MS. PANICO: Objection to form. You're
25 asking her for legal conclusions.

1 V. Dinielli - 1/4/17

2 Q Does it say anything about accrued time in
3 here, Ms. Dinielli?

4 A No. It doesn't say that you could take
5 time off if you don't have it available either.
6 There's a page in here that says what you're
7 entitled to.

8 Don't roll your eyes at me.

9 There's a page in here that says what
10 time -- how do you accrue time also. And if
11 you don't have the time accrued, therefore you
12 can't take it.

13 Q Ms. Dinielli, it says here in the event of
14 an emergency, an employee may be permitted to
15 take a personal day without the requisite two
16 days business notice.

17 Do you see that?

18 A Yes.

19 Q Provided that the employee calls the
20 supervisor and request the day prior to the
21 start.

22 A But if you don't have a personal day, you
23 can't take that.

24 Q Well, where does it say here anything
25 about a requirement for a personal day or a

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2 requirement for accrual?

3 A It says you can take a personal day. You
4 have to have it in order to take it. Such as a
5 vacation day. You can't take a vacation day if
6 you don't have a vacation day.

7 Q It doesn't say that here, does it?

8 A Well, that's interpretation. I interpret
9 it as to mean you need to have it. You can't
10 use something you don't have.

11 Q But it doesn't say that here in the
12 policy, right?

13 A To me that's common sense, but...

14 Q Well --

15 A That's interpretation. That's why I would
16 call to make sure that the way I interpret
17 something is right. And the way I interpreted
18 it was right according to Human Resources.

19 Q What's the purpose of an agreement if
20 you're left to your interpretation,
21 Ms. Dinielli?

22 MS. PANICO: Objection to form.

23 Q Isn't the purpose of an agreement so that
24 people are not left to their interpretation?

25 A There's always reading into something.

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2 Q Well, here it's pretty clear-cut to me.

3 A It's pretty clear-cut to me. You can't
4 take a personal day if you don't have a
5 personal day.

6 MS. PANICO: Please.

7 Q But it doesn't say that there, does it?

8 MS. PANICO: Asked and answered.
9 Objection.

10 Q Drawing your attention to Page 26, do you
11 see that where it begins Section 34,
12 disciplinary procedures?

13 A Yes.

14 Q Would you say that this section here
15 accurately reflects the section that was in
16 play during the year of 2013?

17 A I would think this does. To be totally
18 honest, I haven't read it.

19 Q Drawing your attention to Subpart H, do
20 you see that, where it begins "no penalty"?

21 A Uhm-uhm.

22 Q Can you go ahead and read what it says
23 here?

24 A "No penalty or punishment beyond a
25 reprimand or warning may be imposed unless the

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2 employee has been given a reasonable
3 opportunity to a union representative present
4 at the time any such penalty or punishment is
5 imposed. It is the employee's responsibility
6 to have his or her union representative be
7 available within a two-hour minimum period."

8 Q Would you say that that after reading it
9 is an accurate summarization of the
10 disciplinary procedure?

11 A Yes.

12 Q Drawing your attention to Plaintiff's
13 Exhibit 5 which was provided to you previously,
14 let me know once you have that document there
15 in front of you.

16 Do you see that document there in front of
17 you?

18 A Yes, I do.

19 Q Do you see where it says that as you know,
20 your employment was terminated effective 10/22.
21 Included in the charges and specifications
22 against you where charges were based upon
23 offensive racial slurs.

24 Do you see that?

25 A Uhm-uhm.

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2 Q Drawing your attention to Subpart H of the
3 disciplinary procedures, does it not say here
4 that no penalty or punishment beyond a
5 reprimand or warning should be imposed unless
6 the employee has been give a reasonable
7 opportunity to have a union rep present at the
8 time that the penalty is imposed it.

9 Do you see that?

10 A Yes.

11 Q So at what point in time was Ms. Skates
12 given a reasonable opportunity to have a union
13 representative present before she was
14 terminated when she was terminated on a day
15 that she wasn't even at work?

16 MS. PANICO: Objection to form.

17 A We always -- she always had a union
18 representative with her.

19 Q You testified previously that the last day
20 you saw Ms. Skates was the last day that she
21 worked was October 21st, right?

22 A Uhm-uhm.

23 Q She was terminated, based upon this
24 letter, the day after, right?

25 A No. She was terminated on 10/22 and I

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2 believe a union representative was present.

3 Q You just testified that the last day you
4 saw Ms. Skates at the facility was on
5 October 21st.

6 A No, I did not. I did not. That was the
7 22nd. The 21st was the day I saw her leave the
8 facility when she claimed she was injured.

9 So don't roll your eyes at me when you're
10 not right yourself.

11 Q You testified -- did you see Ms. Skates on
12 the 22nd?

13 A Yes, I did.

14 Q When did you see Ms. Skates on the 22nd?

15 A She called me and said she was coming in
16 to fill out an incident report. She called out
17 sick in the morning. I did not speak to her.
18 Then she came in.

19 She didn't call me. I take that back.

20 She called in the morning. She called out
21 sick. She was having -- she was having -- she
22 was in the hospital. Then on her way home, she
23 came to the rec center to fill out an incident
24 report. That is when I saw her.

25 Q So Ms. Skates was not in on the 22nd.

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2 Only came in to fill out a sick form, right?

3 A Correct.

4 Q Okay.

5 So I was correct when I said the last day
6 you saw Ms. Skates work was the day that you
7 saw her leave which was on October 21st?

8 A Last day I saw that she worked. The next
9 day she came in, but I did see her.

10 Q Now, it states here that effective
11 October 22nd, right? That would have been the
12 last day you saw Ms. Skates work, right?

13 MS. PANICO: Objection.

14 A Uhm-uhm.

15 Q Is that a yes?

16 A That's the last day I saw her in the
17 workplace.

18 Q That's a yes?

19 A In the workplace, right.

20 Q At what point in time -- from the last day
21 you saw Ms. Skates in the workplace on
22 October 21st --

23 A 22nd.

24 Q Well, you said the last day -- withdrawn.

25 The last day you saw Ms. Skates work was

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2 October 21st.

3 A I saw her punch out, yes.

4 Q So the last time you saw Ms. Skates punch
5 out was on October 21st.

6 A Correct.

7 Q So when between October 21st, the last day
8 you saw her punch out to the next day that she
9 was terminated October 22nd, did Ms. Skates
10 have an opportunity to have -- a reasonable
11 opportunity to have her union representative
12 present before she was terminated?

13 A Human Resources called them and notified
14 them.

15 Q Does it say in here in Subpart H that
16 Human Resources can take the place of a union
17 rep? Can you show me where it says that in
18 Subpart H?

19 MS. PANICO: Objection.
20 Mischaracterization of testimony.

21 A I didn't say --

22 Q Can you show me anywhere in Subpart H
23 where Human Resources is even mentioned. Can
24 you take a look at it?

25 A I don't need to take a look at it. I

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2 don't know that it says or it doesn't say.

3 Human Resources is who -- I am management.

4 I work with Human Resources. I don't work with

5 the union. The union won't even speak to me.

6 Q But with respect to Subpart H where it

7 says no penalty or punishment beyond reprimand

8 or warning may be imposed, there's nothing in

9 here that indicates a requirement for clearance

10 or approval through Human Resources, right?

11 A Human Resources is the one that deals with

12 the employees.

13 Q Show me here where it says that Human

14 Resources is even a part of this discussion in

15 Subpart H.

16 A Human Resources is the one that terminated

17 here.

18 Q My question, Ms. Dinielli --

19 A Human Resources terminated her. I did not

20 terminate her.

21 Q My question, Ms. Dinielli, is where in in

22 Subpart H do you see the word Human Resources?

23 A Where does it say anybody? Where does it

24 say who to -- who terminated her. Human

25 Resources, the members of Human Resources and

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2 legal counsel terminated her.

3 Q You testified earlier that you learned
4 that there were charges and specifications made
5 against Ms. Skates for offensive racial slurs
6 that she had made to Ms. Vicky Grotton and
7 Anique Adams.

8 You testified to that, right?

9 MS. PANICO: Objection to form.

10 A Yes.

11 Q Drawing your attention to Subpart M of
12 Page 27, do you see that?

13 Go ahead and read that to me, please,
14 Subpart M.

15 A "Notice of Discipline and Charges. An
16 employee who is entitled to the protection of
17 this section shall within 20 days of the
18 imposition of a penalty be served with a
19 written notice of the discipline and charges of
20 incompetence and/or misconduct either in person
21 or by certified mail, return receipt requested
22 to his or her current address as it appears on
23 the Village personnel records. If the employee
24 wishes to contest said" --

25 Q Okay.

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2 MS. PANICO: Can she finish?

3 A -- "employee must proceed in accordance
4 with disciplinary review procedure set forth in
5 this section. A copy of notice and charges
6 shall simultaneously be served upon the union."

7 Q How is it possible that Ms. Skates would
8 have been served with such notice called for
9 under Section 21 Subpart M in less than a day
10 after the decision to terminate her? How is
11 that possible?

12 A I don't know. You would have to check
13 with Human Resources. I don't know.

14 Q Now that you read the policy, would you
15 say that that -- the termination process
16 followed this agreement?

17 A I don't know what went on in that office,
18 so I'm not going to say anything.

19 Q But you can read, right?

20 A I could read, but I don't know what steps,
21 what actions they took.

22 Q Based upon --

23 A I'm not going to speak for a department
24 that I don't work in.

25 Q Well, you were her supervisor, right?

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2 A Uhm-uhm.

3 Q And you were cc'd in the letter dated
4 October 23rd, right?

5 A Yes.

6 Q You were the one that received the
7 complaints from Vicky Grotton and Anique Adams
8 about the racial slurs, right?

9 A Uhm-uhm.

10 Q So why is it that you have no idea about
11 whether or not the policy was followed with
12 respect to the notice of discipline and
13 charges?

14 MS. PANICO: Objection.

15 You're asking for a legal interpretation
16 in an area she already indicated she's not
17 familiar with.

18 I'm asking you to please move on.

19 Q You may answer.

20 A When the complaints were made, I told them
21 that they had to follow Village protocol and go
22 to Human Resources or call their union
23 representative.

24 Q Well, why would you tell them to follow
25 Village protocol when you don't follow it

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2 yourself?

3 MS. PANICO: Objection to form.

4 A I believe I follow it.

5 Q Was Ms. Skates afforded the protection of
6 this section as set forth here?

7 MS. PANICO: Objection.

8 A She always had union representation.

9 Q Was she given 21 days at the imposition of
10 a penalty to be served with that?

11 A I do not know.

12 MR. HENRY: I think we have about an hour
13 and probably -- about an hour maybe 30 minutes
14 left. So would you be willing to stipulate to
15 the production of this witness and also to
16 provide us with the dates for the other
17 witnesses by January 6th, Ms. Panico?

18 MS. PANICO: In regards to the present
19 witness that's being deposed, I will agree if
20 Mr. Henry doesn't want to complete her
21 deposition today, which Ms. Dinielli has
22 indicated that she is, in fact, available to
23 continue the deposition today. And I have also
24 indicated that I am available to complete the
25 deposition today. But, nevertheless, if

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2 Mr. Henry does not want to complete the
3 deposition today, I will make Ms. Dinielli
4 available for another hour and a half on a
5 separate date.

6 In regards to the witnesses that Mr. Henry
7 is referring to, we will have to deal with that
8 off the record in a separate stipulation. I'm
9 not going to deal with that during
10 Ms. Dinielli's deposition. I don't believe
11 that that's the appropriate way to handle those
12 depositions.

13 MR. HENRY: I disagree with your
14 characterization. For one, it's not that I'm
15 not able to continue. The time now is 7:36.
16 We've spent a considerable amount of time. I
17 made an accommodation for you to start at
18 12:30. You showed up 30 minutes later or
19 actually a little bit more than 30 minutes
20 later. And I've made that accommodation
21 because of representations you made to me in
22 terms of your scheduling.

23 With that said, I'm -- there certain
24 documents that we requested that are subject to
25 our ongoing issues. For instance, there was

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2 some policy paperwork that I requested
3 pertaining to FMLA policies. This witness here
4 testified that there was some notes in her file
5 that she reviewed separate and apart from
6 Ms. Skates' file. We requested those documents
7 pursuant to the rule which I cited on the
8 record earlier. There are a number of
9 documents that will be forthcoming based upon
10 the testimony that this witness has provided
11 today. Some of those requests, as I indicated,
12 earlier were made months ago and I never got
13 them.

14 So what I'm saying is is that if you're
15 agreeing to stipulate, it's not because I'm not
16 prepared to go forward, it's just that it will
17 save the time of me making an application to
18 the Court because of your failure to turn over
19 documents that you could have turned over
20 months ago.

21 Based upon this witness' testimony
22 earlier, she didn't indicate at all that you
23 even requested any documents or notes from her.
24 I couldn't even test her knowledge on what
25 documents were requested of her or did she

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2 review because you raised the issue of
3 attorney-client privilege.

4 So to that end --

5 MS. PANICO: I would like to correct the
6 record.

7 First of all, Ms. Dinielli did indicate
8 that she turned over her files to counsel.

9 MR. HENRY: Not you.

10 MS. PANICO: I indicated on the record
11 that I have, in fact, produced Ms. Dinielli's
12 file.

13 MR. HENRY: That you may have.

14 MS. PANICO: I indicated on the record
15 that we produced -- not that I may have. I
16 know for absolute certainty that I did. I also
17 indicated for absolute certainty that we
18 produced a copy of the Village's FMLA policy.
19 So if Mr. Henry --

20 MR. HENRY: Again, I don't have that
21 policy. Again, I asked for the Bates number.
22 You were able to look in your phone and find
23 e-mails dated --

24 MS. PANICO: I have access to my e-mail on
25 my phone. I don't have access to my case files

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2 on my phone.

3 MR. HENRY: You're stipulating that you're
4 going to produce this witness again.

5 Now, I don't want to have an
6 off-the-record discussion about the other
7 witnesses. As you know, we've noticed these
8 witnesses months ago. Whether you want to
9 believe -- whether we agree to disagree on when
10 you could actually confirm Ms. Dinielli's
11 deposition, the earliest of that confirmation
12 based upon your numbers would have been
13 December 30th, which was four days ago and
14 factoring the weekend and New Year's Day that
15 actually is only one business day ago.

16 That was what you stated on the record
17 when you read your phone and showed when you
18 believed you confirmed it. And at the latest
19 in that spectrum, I requested a confirmation
20 yesterday after 4:00 which you confirmed at
21 6:03.

22 MS. PANICO: I confirmed it on
23 December 30th, the same exact day that you
24 asked me whether or not we could proceed on
25 January 4th.

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2 MR. HENRY: I asked because you were
3 giving me dates outside of discovery and I
4 demanded that we get a date while within the
5 period of discovery and the e-mails will
6 reflect that you were going to get me at least
7 one witness as you testified and the rest
8 afterwards.

9 So, again, I'm not going to go back and
10 forth with you, especially with someone who
11 called me a prick in front of a whole
12 conference room. What I'm saying is is that we
13 need some finality on these other witnesses.

14 Right now I have an associate in my office
15 that's in the process of preparing a motion to
16 compel. I believe we've exhausted our good
17 faith efforts numerous times. And my intention
18 was not to file this motion to compel because I
19 wanted to work with you.

20 My question to you is: Can you provide to
21 me by January 6th dates for the witnesses that
22 were noticed months ago?

23 To that end, I know that you have some
24 issues with documents and productions. And,
25 again, I have every document here that was

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2 produced to you. I could print them out, give
3 them to you again.

4 You gave me a whole list of issues that
5 you had with our production and I gave you
6 issues that I had with our production. I
7 remember in a conference call with the Court it
8 was clear that the source -- best source of
9 information would have been a deposition for
10 the majority of the questions you had. And I
11 had agreed to supplement our response, which I
12 believe was sent to you. But one thing has
13 nothing to do with the other.

14 We noticed witnesses to be deposed.
15 Discovery closes in two days. You promised
16 that you would produce those witnesses. And
17 now it seems that you've made an about-face in
18 doing so and that promise to do so and I wanted
19 to get some finality.

20 MS. PANICO: What I would like to indicate
21 on record is that Mr. Henry was supposed to
22 produce HIPAA authorizations back in June of
23 this past year. To date, we are still looking
24 like for a HIPAA authorization for the physical
25 therapist that plaintiff saw related to wrist

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2 injury. Complaint indicates that the plaintiff
3 saw physical therapist in Paragraph 81 of the
4 complaint. We've requested this numerous
5 times. We still have not received it.

6 In addition, the plaintiff was served with
7 discovery demands after months and multiple
8 telephone calls with the Court in which we
9 requested a motion to compel. We requested
10 permission to file a motion to compel regarding
11 the plaintiffs failure to produce responses to
12 our document demands.

13 After multiple telephone calls with the
14 Court, Mr. Henry agreed that he would, in fact,
15 produce responses to our document demands.
16 However, rather than providing a good faith
17 response to our document demands, he simply
18 objected to every single demand and indicated
19 that he was objecting and that investigation
20 was ongoing with regards to our demands.

21 It is our position that this is wholly
22 improper and that Mr. Henry should be required
23 to indicate whether or not he is objecting to
24 the demand, whether or not the documents cannot
25 be located. Essentially a definitive answer as

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2 to whether or not these documents even exist.

3 We have no basis to believe that these

4 documents are not in existence at this point.

5 At this point, it seems that Mr. Henry is

6 simply refusing to produce them. Although off

7 the record he has indicated that they don't

8 exist, I need something in writing from

9 Mr. Henry indicating with respect to each of

10 our demands whether or not the documents that

11 we've requested exist or not.

12 MR. HENRY: They don't exist, on the

13 record. And I told you this before, I told you

14 this in the presence of the Court's clerk,

15 whatever we haven't turned over to you does not

16 exist.

17 Also, let the record reflect that

18 Ms. Panico is merely reading from an e-mail

19 that she sent dated in or around December -- I

20 believe we have several e-mails here on the

21 same point, but it seems as though the earliest

22 of those was December 21st where in sum and

23 substance she wrote --

24 MS. PANICO: Mr. Henry, can you please

25 allow me --

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2 MR. HENRY: I just want it clear on record
3 that the e-mail you're reading from is one
4 dated December 21st.

5 MS. PANICO: Okay.

6 MR. HENRY: And that's what I have here.
7 And that e-mail, again, predates the time that
8 we made our production to Ms. Panico of the
9 items that she is contending that she did not
10 receive.

11 In fact, Ms. Panico sent us an e-mail
12 thereafter, I'll give you the exact date, where
13 she actually --

14 MS. PANICO: Mr. Henry, please allow me to
15 go --

16 MR. HENRY: I'm not going to have you
17 lying.

18 MS. PANICO: I'm not lying.

19 MR. HENRY: Yeah, you are. Because I'm
20 reading exactly from the e-mail that you
21 sent --

22 MS. PANICO: Mr. Henry, please.

23 MR. HENRY: -- and where you acknowledge
24 receipt. I'm reading it right here.

25 MS. PANICO: Time and time again I've

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2 demonstrated to you that what you consider to
3 be my lies are not actually lies but are
4 actually truth. I've shown you e-mail after
5 e-mail indicating that you contend are me lying
6 and making misrepresentations are not
7 misrepresentations.

8 MR. HENRY: You called me a prick off the
9 record, right?

10 MS. PANICO: Mr. Henry, please.

11 MR. HENRY: Is that a yes or no?

12 MS. PANICO: Like I said, I'm not your
13 witness. I'm not the one on trial here. Can
14 you please refrain from harassing me?

15 MR. HENRY: I'm not harassing you.

16 MS. PANICO: In addition to what I set
17 forth already regarding the HIPAA
18 authorizations and plaintiff's failure to
19 response to discovery document demands --

20 MR. HENRY: Disagree.

21 MS. PANICO: -- we also requested that the
22 plaintiff -- within those documents demands to
23 produce phone records. There's simply no
24 reason why Ms. Skates can't produce phone
25 records or at least authorizations for the

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2 defendant to obtain her phone records from the
3 phone in which she alleges that she called in
4 sick to work.

5 MR. HENRY: One moment, please.

6 May I please have the plaintiff,
7 Ms. Skates, sworn in.

8 E A R L I N E S K A T E S, called as a witness,
9 having been first duly sworn by a Notary Public
10 of the State of New York, was examined and
11 testified as follows:

12 EXAMINATION BY

13 MR. HENRY:

14 Q Ms. Skates, how many times have I asked
15 for you to produce to me all the documents that
16 you have?

17 A Maybe twice.

18 Q Did you produce to me all the documents
19 that you had?

20 A I provided everything except out-of-pocket
21 monies. That I -- my medications.

22 Q Did I not provide you with a copy of the
23 requests that Freeport sent me for you to?

24 A Yes.

25 Q Did you not type the responses --

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2 A Yes.

3 Q -- to each and every question?

4 A Yes.

5 Q Did you not respond truthfully and verify
6 those?

7 A Yes.

8 Q How many times did I have you come in and
9 notarize and sign a verification form to the
10 responses that you gave, that they were true?

11 A Twice.

12 Q As you're standing here today, are there
13 any documents that you have that I don't have?

14 A No.

15 Q As you're standing here today, are there
16 any phone records that you have that I don't
17 have?

18 A I don't think so.

19 Q Have you searched and looked as far and
20 high and low as you could to give me everything
21 that I've asked you for?

22 A Yes.

23 Q How many times have I called you here in
24 the middle of the night or in the middle of the
25 afternoon to make sure and reverify and double

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2 verify that what you wrote and gave me was
3 everything that was the case?

4 A At least five times.

5 MR. HENRY: Let the record reflect that I
6 just asked Ms. Skates questions on the record
7 pertaining to documents that she may or may not
8 have had that counsel believes that I'm somehow
9 holding on to. Ms. Skates has testified under
10 oath, under oath right on the spot, that there
11 is no such documents.

12 MS. PANICO: What I'm asking for are
13 proper responses to my discovery demands.

14 MR. HENRY: Now you have the testimony of
15 Ms. Skates on the record that you can certainly
16 ask her on Friday or what date it is for her
17 deposition, on the 6th, you can follow up. You
18 now have sworn testimony from her that there's
19 nothing else.

20 MS. PANICO: If you want me to go through
21 each one of my discovery demands with
22 Ms. Skates right now, then I'm happy to do
23 that.

24 MR. HENRY: Ms. Skates just testified that
25 there's nothing else further that she has.

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2 MS. PANICO: But you're not asking her
3 pointed questions.

4 MR. HENRY: You can do so on Friday.

5 MS. PANICO: I'm not going to waste my
6 time compelling responses to discovery demands
7 that should have been responded to several
8 months ago.

9 MR. HENRY: The record will speak for
10 itself.

11 I'm done here.

12 MS. PANICO: Again, the last thing that
13 we're still looking for are copies of the
14 plaintiff's phone records or at least an
15 authorization to obtain phone records from the
16 telephones of Ms. Skates allegedly called to
17 the Village to let them know that she's going
18 to be out for the day.

19 We are willing to produce the individuals
20 who the plaintiff noticed for deposition
21 contingent upon our receipt of these three
22 outstanding items. To date, Mr. Henry and the
23 plaintiff have not produced any responses to
24 our discovery demands.

25 With respect to the interrogatories,

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2 nearly every single interrogatory was objected
3 to.

4 With respect to our document demands, as
5 I've indicated already, every single demand was
6 objected to with an indication that there was
7 simply an ongoing investigation.

8 There's still HIPAA authorizations that's
9 outstanding since the booking of June. And
10 because of fact that Mr. Henry did not produce
11 the HIPAA authorizations until about a week or
12 two weeks ago, there's no way that we'll have
13 Ms. Skates' medical records by the time of her
14 deposition which obviously prejudices the
15 defendant.

16 So because of the fact that Mr. Henry and
17 the plaintiff have been so delinquent in there
18 responses to our discovery demands, we simply
19 cannot, without prejudicing ourselves, produce
20 five more witnesses for Mr. Henry and the
21 plaintiff where we're still requesting and
22 looking for simple responses to our document
23 demands.

24 MR. HENRY: Ms. Panico, have you ever sent
25 me a deficiency letter?

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2 MS. PANICO: Yes. I sent you an e-mail
3 indicating --

4 MR. HENRY: Have you ever sent me a
5 deficiency letter prior to December 21st of
6 2016?

7 MS. PANICO: I have sent you probably --
8 I'm not the one you're deposing. In case you
9 forgot I'm your adversary. I'm opposing
10 counsel. So don't speak to me like I'm the
11 witness here.

12 (Counsel speaking simultaneously.)

13 MR. HENRY: Let the record reflect that
14 Ms. Panico is yelling at me.

15 MS. PANICO: That's number one.

16 Number two, yes I have sent you multiple
17 correspondences since June.

18 MR. HENRY: We're finished here. We're
19 going to adjourn and the second part, as
20 counsel stated, and we are going to be
21 proceeding with our motion. And there you have
22 it.

23 So do you have a date in mind now that we
24 can select?

25 THE WITNESS: I don't know when --

1 Proceedings

2 MS. PANICO: I'll speak to Ms. Dinielli
3 after we leave.

4 MR. HENRY: All right. Thank you.

5 Let the record reflect now that the time
6 is 7:49 and that we believe we have at least an
7 hour and a half remaining.

8 And counsel is being served with a notice
9 to depose for -- dated for tomorrow for
10 Ms. Dinielli. And subject to her providing me
11 with a new date, I would expect to see her
12 tomorrow.

13 MS. PANICO: Mr. Henry is currently being
14 so served with a Notice of Deposition for
15 Ms. Skates for this upcoming Friday, January 6
16 at 10 o'clock a.m. This was a second Notice of
17 Deposition. Mr. Henry is unnecessarily
18 requiring me to jump through hoops. Generally,
19 I have relationships with my adversary whereby
20 we can consent to production of witnesses. But
21 Mr. Henry is now requiring me to produce a
22 second Notice of Deposition.

23 BY MR. HENRY:

24 Q Ms. Skates, as you've already been sworn
25 in, did you not indicate to me, on

1 Proceedings

2 January 6th that you were previously scheduled
3 for jury duty?

4 A Yes.

5 Q Did you not request from me something in
6 writing indicating when -- the date of that
7 deposition so you can produce if asked for?

8 A Yes.

9 MR. HENRY: Let the record reflect that I
10 requested from Ms. Panico on at least two
11 occasions prior to today this very same Notice
12 of Deposition as she gave to me now because
13 Ms. Skates needed it because of the impending
14 jury duty that she has so that she wouldn't be
15 running into any issues with it. And that's
16 the reason why I asked. Not because I wanted
17 her to jump through loops but because
18 Ms. Skates needed to ensure that her civic duty
19 of jury duty -- she wasn't in violation.
20 That's why I asked for this.

21 MS. PANICO: Let record reflect that
22 Mr. Henry never informed me that Ms. Skates had
23 jury duty on January 6th.

24 MR. HENRY: Why would I have to? I just
25 asked for a notice, an updated notice with the

Proceedings

dates because Ms. Skates needed it for personal reasons.

MS. PANICO: And, like I said, that's generally -- that is not the way that is generally professionally done.

MR. HENRY: E-mail says she needed it for personal reasons, I believe. What more do you want me to say?

(Whereupon, at 7:52 p.m., the Examination of this Witness was concluded.)

VICTORIA DINIELLI

Subscribed and sworn to before me
this ____ day of _____, 2017.

NOTARY PUBLIC

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I N D E X

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WITNESS

PAGE

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VICTORIA DINIELLI

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EXAMINATION BY

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MR. HENRY

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EARLINE SKATES

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EXAMINATION BY

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MR. HENRY

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PRODUCTION REQUESTS

PAGE/LINE

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Copy of documents reviewed by the witness
on the date of the deposition

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Witness' job application with Freeport

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14 QUESTIONS MARKED FOR A RULING

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2 CERTIFICATION

3 STATE OF NEW YORK)

4 : SS.:

5 COUNTY OF NEW YORK)

6 I, CHANDRA D. BROWN, a Notary Public for
7 and within the State of New York, do hereby certify:

8 That the witness whose examination is
9 hereinbefore set forth was duly sworn and that such
10 examination is a true record of the testimony given
11 by that witness.

12 I further certify that I am not related to
13 any of the parties to this action by blood or by
14 marriage and that I am in no way interested in the
15 outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand the 25th day of January, 2017.

18

19

20 _____
CHANDRA D. BROWN, RPR, CLR

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